

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

Counsel for the Plaintiff

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08:38:09 2 THE COURT: Good morning. Goodness. This is --  
08:38:14 3 you can be seated. Is this all the people -- are you with  
08:38:18 4 the parties?

08:38:20 5 MR. SNOW: No, ma'am.

08:38:21 6 THE COURT: I don't want up that close to our  
08:38:24 7 people so I need you to back up.

08:38:27 8 Okay. Let start with some introductions.

08:38:29 9 MR. ANIS: Good morning, Your Honor. Shamoor  
08:38:35 10 Anis here from the United States Attorneys Office for the  
08:38:38 11 District of Delaware on behalf of the United States. I'm  
08:38:40 12 joined at counsel table by Brian Hanna, Michael Wolin,  
08:38:45 13 Chinita Sinkler and Bobby Lepore.

08:38:46 14 THE COURT: Good morning.

08:38:49 15 MR. ANIS: Assisting with the technology will  
08:38:51 16 also be William Snow.

08:38:52 17 THE COURT: Good morning. I have a limit of  
08:38:54 18 like nine people in here. Are we under these limits? It  
08:38:57 19 looks ridiculous, especially since we have COVID issues.

08:39:02 20 MR. BLUMENFELD: Your Honor, for US Sugars, we  
08:39:04 21 have seven people here. I believe there are third-party  
08:39:07 22 lawyers here this morning also because of the  
08:39:12 23 confidentiality issues.

08:39:12 24 THE COURT: All right.

08:39:13 25 MR. BLUMENFELD: And we will as the trial goes

08:39:17 1 on, we'll have people coming and going.

08:39:20 2 THE COURT: I don't want this many people in the  
08:39:21 3 courtroom. If I'm allowing -- I think I have allowed you  
08:39:26 4 guys to broadcast it, then I don't want this many people in  
08:39:30 5 the courtroom when I'm getting e-mails about people having  
08:39:35 6 COVID.

08:39:35 7 MR. BLUMENFELD: Your Honor, we will reduce the  
08:39:37 8 number of people to the minimum.

08:39:39 9 Jack Blumenfeld for US Sugars.

08:39:41 10 THE COURT: You're used to my moods,  
08:39:44 11 Mr. Blumenfeld.

08:39:45 12 MR. BLUMENFELD: Excuse me?

08:39:46 13 THE COURT: You're used to my moods so you can  
08:39:48 14 deal with it on a Monday morning.

08:39:50 15 MR. BLUMENFELD: I'm here with Lawrence Buterman  
08:39:52 16 for Latham who is going to do the opening, Chris Brown from  
08:39:54 17 Latham, Elyse Greenwald from Latham, Chris Yates from Latham  
08:40:00 18 and in the first row we have Luke Kurts, who is the general  
08:40:02 19 counsel at US Sugars and Bob Buker who is the president of  
08:40:04 20 US Sugars.

08:40:06 21 THE COURT: All right. Good morning.

08:40:08 22 MS. FARNAN: Good morning, Your Honor, Kelly  
08:40:10 23 Farnan from Richards, Layton & Finger on behalf of LDC and  
08:40:12 24 Imperial. I'm joined at counsel table by Tim Cameron, we  
08:40:14 25 have Daniel Zach and Hannah Dwyer. And then we also have

08:40:33 1 two client representatives, one from Imperial, the president  
08:40:37 2 and CEO, Mike Gorrell. And from LDC, we have Neil Grealy  
08:40:42 3 who is the chief legal officer of LDC North America.

08:40:45 4 THE COURT: Good morning to all of you as well.  
08:40:47 5 We have some third parties.

08:40:53 6 MR. KERRICK: Good morning, Your Honor. Daniel  
08:40:54 7 Kerrick on behalf of Hogan McDaniel. I'm joined by my  
08:40:57 8 co-counsel Peter Schwingler. Also I'm joined by the CEO  
08:41:00 9 Matthew Wineinger.

08:41:03 10 THE COURT: Good morning. And we have some  
08:41:04 11 third parties here. I guess we'll deal with those as we go  
08:41:08 12 through these things. What I am planning to do is take this  
08:41:11 13 out of the trial time of the party who wants to introduce  
08:41:15 14 the evidence. If I find out that there is a reason why  
08:41:19 15 that's not fair, I will go back and retroactively  
08:41:23 16 redistribute the time, but for now, I guess we need to deal  
08:41:27 17 with plaintiff's letter or e-mail from this morning.

08:41:30 18 So plaintiff's intention to request the Court to  
08:41:34 19 close the courtroom for a portion of the live testimony of  
08:41:38 20 plaintiff Aaron Riippa to protect the confidentiality of  
08:41:42 21 General Mills' competitively sensitive information, and for  
08:41:46 22 that one, is the government planning to simply -- how much  
08:41:50 23 time are we doing? Are you going to put it all together?  
08:41:54 24 What is the plan?

08:41:58 25 MR. WOLIN: Yes, Your Honor, we're planning a

08:41:58 1 total of forty-five-minute examination of Mr. Riippa, the  
08:42:01 2 last ten minutes of that examination we will seek to seal  
08:42:04 3 the courtroom to protect General Mills' sensitive and  
08:42:08 4 confidentiality information.

08:42:09 5 THE COURT: How sensitive is it? Why do we need  
08:42:12 6 -- can I see the documents? What is it that you're going to  
08:42:15 7 be doing that you can't do by just pointing me to things in  
08:42:19 8 a document, like what is it that you have to say or show on  
08:42:23 9 the record?

08:42:24 10 MR. WOLIN: Your Honor, it includes information  
08:42:26 11 about General Mills, possibilities for suppliers, which if  
08:42:30 12 the buyers knew which suppliers General Mills was able to  
08:42:32 13 use, they could use it to General Mills' detriment. It  
08:42:36 14 would be both documents and testimony on that topic, also  
08:42:38 15 specific bid prices, specific confidential data and terms of  
08:42:40 16 contract awards that General Mills has given out.  
08:42:42 17 Spreadsheets that detail confidential information and terms  
08:42:44 18 of bid offers from various suppliers.

08:42:46 19 THE COURT: But I'm asking, is that stuff you  
08:42:48 20 need to say on the record and show in the courtroom? That's  
08:43:00 21 my question, because we talked about this at the pretrial  
08:43:02 22 conference where one of you said we didn't have to ask  
08:43:04 23 questions. I understand this is confidential and if you  
08:43:06 24 need to show it, I have to consider this request to close  
08:43:08 25 the courtroom. I'm trying to explore whether I have to do

08:43:18 1 that.

08:43:19 2 MR. WOLIN: Yes, Your Honor, there is testimony  
08:43:20 3 that we seek to offer from Mr. Riippa that could not be  
08:43:24 4 shown in the documents, only that would need to be elicited  
08:43:27 5 on the record.

08:43:28 6 THE COURT: All right. And you're representing  
08:43:30 7 it's about ten minutes?

08:43:32 8 MR. WOLIN: Yes, Your Honor.

08:43:33 9 THE COURT: And you're going to do it together  
08:43:35 10 at the end of the direct?

08:43:36 11 MR. WOLIN: Yes, Your Honor.

08:43:37 12 THE COURT: And any cross that's going to be  
08:43:39 13 done on that, you're going to do at the beginning?

08:43:41 14 MS. GREENWALD: Good morning, Your Honor. Elyse  
08:43:43 15 Greenwald from US Sugar.

08:43:44 16 Yes, we don't believe we need to seal the  
08:43:46 17 courtroom, but if there is an extended seal, we can do that  
08:43:48 18 portion right after the direct.

08:43:49 19 THE COURT: And you're going to have to get up  
08:43:51 20 and be quick about it so we can open the courtroom, but I  
08:44:01 21 will allow you to seal that particular stuff.

08:44:02 22 What's next.

08:44:03 23 MR. WOLIN: Thank you, Your Honor.

08:44:04 24 The second issue involved deposition testimony  
08:44:05 25 from certain third-party witnesses that the government seeks

08:44:10 1 to offer either later this afternoon or first thing  
08:44:14 2 tomorrow, depending on how quickly things go. It's  
08:44:17 3 testimony from sugar purchasers, sugar distributors and  
08:44:22 4 other sugar refiners. Of those six witnesses that we intend  
08:44:26 5 to call, three of them will also be called by the defendant  
08:44:32 6 at that time, we'll have all the designations from both  
08:44:35 7 sides together.

08:44:36 8 THE COURT: Is the defendant asking to seal the  
08:44:37 9 courtroom?

08:44:38 10 MS. GREENWALD: We have no objection to sealing  
08:44:41 11 the courtroom.

08:44:41 12 THE COURT: Yeah, but are you asking?

08:44:44 13 MS. GREENWALD: The third parties have made that  
08:44:47 14 request.

08:44:49 15 THE COURT: So you don't want it sealed, because  
08:44:51 16 you got the information from the third parties you're making  
08:44:54 17 that request?

08:44:55 18 MS. GREENWALD: That's right.

08:44:56 19 THE COURT: Is that right?

08:44:57 20 MS. GREENWALD: Yes, Your Honor.

08:44:59 21 THE COURT: All right. How much of this -- I  
08:45:02 22 guess with the deposition it's hard to -- how much is really  
08:45:05 23 sensitive? I have these depositions. A lot of this looks  
08:45:08 24 like it's not terribly sensitive at all.

08:45:11 25 MR. WOLIN: Your Honor, it's just a portion of



08:45:17 1 the deposition but it starts with the nonconfidential  
08:45:21 2 testimony in such a way that it would be inconceivable to  
08:45:24 3 splice it.

08:45:24 4 THE COURT: We will close the courtroom for  
08:45:26 5 those depositions. By tomorrow, you must give portions of,  
08:45:30 6 you know, redacted out portions from the transcript, tell  
08:45:33 7 the court reporter so that we can have a sealed and unsealed  
08:45:38 8 and the portions that are not sealed will be unsealed.

08:45:40 9 MR. WOLIN: Yes, Your Honor.

08:45:42 10 THE COURT: What's next?

08:45:43 11 MR. WOLIN: The last issues we have teed up on  
08:45:46 12 our e-mail was the confidentiality of information supplied  
08:45:48 13 by ASR. We have continued to work with ASR since we sent  
08:45:51 14 the e-mail last night. We appreciate their efforts to  
08:45:54 15 resolved this issue, four of the five issues that we raised.  
08:46:00 16 We believe that the other one we will resolve today. It's  
08:46:03 17 for a document that will come up tomorrow.

08:46:05 18 THE COURT: So why don't we give you until  
08:46:07 19 tomorrow to figure that out.

08:46:10 20 MR. WOLIN: Yes, Your Honor, that will be great.

08:46:12 21 THE COURT: Anything else we have to do? I'm  
08:46:14 22 supposed to admit someone.

08:46:16 23 MR. WOLIN: Thank you, Your Honor.

08:46:18 24 MR. SEAMANS: Good morning, Your Honor. Thank  
08:46:21 25 you. John Seamans from Abrams & Bayliss. I'm here to

08:46:25 1 respectfully move the admission of my friend and colleague,  
08:46:29 2 Garrett Veres to the Bar of the United States District Court  
08:46:31 3 for the District of Delaware.

08:46:33 4 THE COURT: All right.

08:46:34 5 MR. SEAMANS: Mr. Veres will be representing ASR  
08:46:37 6 today.

08:46:37 7 THE COURT: Mr. Veres, welcome. The motion is  
08:46:40 8 granted and welcome. Mr. Buckson, do you want to swear him  
08:46:43 9 in.

08:46:45 10 COURT DEPUTY: Please raise your right hand.

08:46:46 11 You do solemnly swear to the best of your  
08:46:49 12 knowledge and ability, you will support and defend the  
08:46:51 13 constitution of the United States against all enemies,  
08:46:52 14 foreign and domestic, and that you will bear true faith and  
08:46:55 15 allegiance to the same; that you take this obligation freely  
08:47:00 16 without any mental reservation or purpose of evasion, and  
08:47:01 17 that you will demean yourself as an attorney, proctor, and  
08:47:05 18 solicitor of this Court uprightly and according to the law.

08:47:08 19 MR. VERES: I do.

08:47:09 20 THE COURT: Thank you.

08:47:11 21 MR. VERES: Thank you.

08:47:11 22 THE COURT: Does ASR, you don't have to say  
08:47:15 23 anything today, right, because you're still negotiating, do  
08:47:19 24 I have that right?

08:47:20 25 MR. VERES: I think that's right, Your Honor.

08:47:21 1 THE COURT: Great. Anything else we need to  
08:47:24 2 deal with before we start?

08:47:27 3 MR. HANNA: Yes, Your Honor. Brian Hanna for  
08:47:29 4 the United States. Just a couple of housekeeping questions.

08:47:32 5 THE COURT: We are still on the clock, right,  
08:47:36 6 Mark?

08:47:36 7 MR. HANNA: We do anticipate introducing or  
08:47:40 8 moving to admit confidential exhibits and I wanted to ask  
08:47:44 9 your preference for admission of confidential information  
08:47:47 10 exhibits, you would move for admission of their original PTX  
08:47:51 11 1 under seal, and then I wanted to ask you if your  
08:47:54 12 preference is for the redacted version to move that in as  
08:47:57 13 PTX 1R.

08:48:01 14 THE COURT: I don't want the redacted version  
08:48:05 15 but if there is a reason, you can work that out with my  
08:48:08 16 deputy.

08:48:12 17 MR. HANNA: Okay. Your Honor will have a copy  
08:48:15 18 of that version.

08:48:19 19 The other item I wanted to ask, I mentioned that  
08:48:22 20 pretrial conference that the witness sequester rule would be  
08:48:25 21 in place. I wanted just to get clarification that that  
08:48:28 22 would not apply to both sides for the experts. We  
08:48:31 23 anticipate that they would need to listen to some of the  
08:48:34 24 testimony during trial. I just want to clarify, with your  
08:48:37 25 permission, that the experts would not be subject to the

08:48:42 1 sequester rule.

08:48:43 2 THE COURT: They're not.

08:48:45 3 MR. HANNA: And I wanted to just state that the  
08:48:51 4 government is planning to reserve a small amount of time for  
08:48:56 5 its rebuttal case. Probably no more than an hour. I just  
08:49:02 6 wanted to let you know that the government was planning to  
08:49:06 7 have a potential rebuttal case.

08:49:08 8 THE COURT: That's fine. You can use whatever  
08:49:10 9 time you have left. I don't keep track where you are. If  
08:49:14 10 you have an hour left of rebuttal, go for it. If you don't,  
08:49:17 11 I'm not going to tell you to stop when you get to an hour.

08:49:21 12 MR. HANNA: Thank you, Your Honor. At the  
08:49:23 13 pretrial conference Your Honor indicated that you were  
08:49:25 14 considering different options for closing and for purposes  
08:49:28 15 of helping us.

08:49:29 16 THE COURT: I think I want to hear it. Plan on  
08:49:32 17 me wanting me to hear closings.

08:49:35 18 MR. HANNA: Is it going to be after this week?

08:49:37 19 THE COURT: No, it's going to be within the time  
08:49:39 20 you have this week.

08:49:40 21 MR. HANNA: Thank you, Your Honor.

08:49:41 22 I guess finally, Your Honor, we sent a letter, I  
08:49:43 23 think on Friday or Thursday with respect to one of United  
08:49:46 24 employees, Ms. Campbell. You graciously granted that she  
08:49:48 25 could be here remote. We tried to work that out and due to

the availability and logistics of the court, the district court where she resides, we're not able to do that. So both sides agreed that we could play her short video deposition. She's more than a hundred miles away and not available.

THE COURT: Okay.

MR. HANNA: I just wanted to clarify that.

THE COURT: Thanks. I appreciate that.

MR. HANNA: Nothing further, Your Honor.

THE COURT: All right. Anything else from the defendants?

MR. BUTERMAN: No, Your Honor.

THE COURT: Great. Let's begin.

MR. HANNA: May I proceed, Your Honor?

THE COURT: Please.

MR. HANNA: Brian Hanna for the United States. May it please the Court, this case --

THE COURT: Hold on. We got to stop that. Do you want to try again, see if it's still doing it.

MR. HANNA: May it please the Court.

THE COURT: Thank you.

MR. HANNA: May it please the Court, Your Honor, this case is straightforward. As a result of a merger, two large sellers of sugar will become one. The two large sellers are United and Imperial, and they compete to sell sugar to food processors, distributors and grocery stores.

Now there is no serious dispute over the product at issue in this case, it's sugar. We're all familiar with this product. Sugar is everywhere in our daily lives. It's a stable ingredient in many of the favorite foods that we eat. The main issue in this case, Your Honor, is where does United and Imperial compete? Where is that competition important? And the evidence will show that sugar is expensive to ship and that is just a commercial reality of this industry and it always has been a commercial reality of this industry.

Everyone working in the sugar industry knows this reality. You will hear testimony from the parties, from customers, and from competitors that acknowledge this reality. And Your Honor will hear one customer say freight is an unforgiving cost. And the trial record will be full of evidence that competition is regional because of freight cost.

United has US Sugar's plant in Florida and Imperial has its sugar plant in Savannah, Georgia, so the evidence will show that United and Imperial are both well situated to compete for and supply customers in the southeast and through the Mid-Atlantic so that is where competition would be affected from this merger. Competition between United and Imperial has forced them to lower prices and provide a better quality services. That competition and

all those benefits would be eliminated if one of United's owners, US Sugar is allowed to acquire Imperial. And the evidence will show that combined, United and Imperial will have a market share of nearly 50 percent or even higher in the southeast and up through the Mid-Atlantic. These market shares reflect the choices that customers have today, and the merger will take away a choice that the market shares tell us has been important to customers. And that choice is Imperial.

The market shares statistics alone create a presumption that this merger would harm customers in violation of Section 7 of the Clayton Act. And the proposed merger would leave customers located in the relevant markets with a dualopoly, United and Domino, they refer to as ASR sometimes, they would control over 70 percent of sales to those customers in the southeast and up to the Mid-Atlantic and the evidence will show today United and Domino, they look for ways to achieve higher prices by avoiding aggressive competition.

And one of the ways they try to achieve higher prices is by using a go between, some sort of consultant as a conduit to exchange pricing and selling capacity information. And the evidence will show that this competitive information is sent back and forth between United and Domino. So we can see that United and Domino

08:55:09 1 have both the means and the incentive to coordinate the  
08:55:12 2 pricing actions in the market. So we should be even more  
08:55:18 3 worried about this merger.

08:55:20 4 By eliminating Imperial, this merger would make  
08:55:23 5 it easier for United and Domino to be successful at this  
08:55:28 6 kind of behavior that tends to lessen competition. This  
08:55:33 7 week we will bring in customers to show how competition  
08:55:36 8 between United and Imperial has been important to them.  
08:55:41 9 After openings, Your Honor will hear from a very large  
08:55:44 10 customer, General Mills, and that evidence will show that  
08:55:47 11 General Mills has benefited from competition between United  
08:55:52 12 and Imperial.

08:55:53 13 Tomorrow Your Honor will hear from a much  
08:55:55 14 smaller customer, Piedmont Candy, and that evidence will  
08:55:59 15 also show that Piedmont has benefited from competition  
08:56:03 16 between United and Imperial. And we can also look at the  
08:56:08 17 defendants' own documents to see how competition between  
08:56:10 18 United and Imperial has benefited customers and it will be  
08:56:15 19 clear from that evidence that United and Imperial compete  
08:56:20 20 and that competition has driven prices lower, so we can take  
08:56:24 21 a look at the evidence now, some of it.

08:56:26 22 Here on the first slide we have United trying to  
08:56:30 23 win business from Bud's Best Cookie. It's a cookie company  
08:56:34 24 in Alabama. We can see that United in this e-mail is  
08:56:38 25 matching Imperial's quote lowering price to be more



08:56:43 1 competitive with Imperial. That is price competition right  
08:56:47 2 here on this document. And the merger would eliminate that  
08:56:50 3 competition. This competition matters and it deserves  
08:56:56 4 protection.

08:56:57 5 We can look at another e-mail. This e-mail is  
08:57:00 6 from Imperial's vice-president of sales. She will testify  
08:57:02 7 in this case, in this example, Imperial is competing hard  
08:57:06 8 for the business of Costco in the southeast. We can see  
08:57:09 9 from Ms. Hines' e-mail that they are competing with United  
08:57:14 10 Cane, that's what she says. That means United is competing  
08:57:17 11 with the sugar produced by US Sugar in Florida. So Imperial  
08:57:21 12 is asking -- is asked by this customer if there is as we see  
08:57:24 13 on this slide any room to go down slightly. So right there  
08:57:29 14 Imperial understands it needs to lower its price to beat out  
08:57:33 15 United and that evidence -- and the evidence will show that  
08:57:37 16 Imperial in fact lowered its price and won some of this  
08:57:41 17 business from Costco. The merger would eliminate that  
08:57:44 18 competition. This is competition that matters, and it  
08:57:48 19 deserves protection, Your Honor.

08:57:49 20 So we can see that competition between United  
08:57:53 21 and Imperial has benefited customers. And looking at that  
08:57:57 22 evidence is important when evaluating the effects of the  
08:58:00 23 merger. And we have additional tools to help us evaluate  
08:58:04 24 the effects of competition from the merger. One of those  
08:58:10 25 tools is market definition.

Now, defining a market can seem formalistic but there is a substantive reason to do this to evaluate mergers. Market definition helps identify what competition is likely to be lost. You know, there are two components to market definition, a product market and a geographic market. As I said earlier there is really no dispute that the relevant product market in this case is refined sugar. Refined sugar is a familiar product. It's the sugar we all eat. Refined sugar can take many forms. We have some pictures on the screen here. Granulated sugar, it's that white crystalized sugar that is probably sitting in a jar in nearly every kitchen across America. The output of the refining process is this granulated sugar and the granulated sugar can take many forms, powdered sugar, brown sugar, and liquid sugar.

Next, we considered geographic market and I said earlier, this is the main issue in this case. For geographic market, as we can see from this *Philadelphia National Bank* Supreme Court case, for geographic market we don't focus on everywhere United and Imperial do business or even everywhere they compete. As the Supreme Court said in *Philadelphia National Bank*, we focus on where the effect on competition would be direct and needed.

Where does competition really matter, Your Honor? We can look at the documents in this case to see

08:59:44 1 where competition between United and Imperial matters.

08:59:48 2 Let's take a look at some of the evidence. Up here on the  
08:59:51 3 slide we see a presentation prepared by the CEOs of United  
08:59:57 4 owners including the CEO of US Sugar, Bob Buker. The title  
09:00:03 5 of this presentation, we can see it on the upper left-hand  
09:00:06 6 side is regional market overview. And that makes sense,  
09:00:10 7 Your Honor. United considers sugar markets to be regional.

09:00:15 8 On the right side we see the title of this map  
09:00:17 9 from United, USC definition, supplier backyards. United is  
09:00:24 10 defining what it can considers to be regional markets.  
09:00:28 11 United defines each market here by where each sugar producer  
09:00:32 12 has freight cost advantages serving customers in those  
09:00:36 13 various regions and from this document we can see the  
09:00:39 14 southeast, the collection of states in red there, Your  
09:00:41 15 Honor, that is where United operates, US Sugar and Imperial  
09:00:45 16 have a freight cost advantage. United considers the  
09:00:51 17 six-state region in the southeast to be their backyard. So  
09:00:57 18 that's a good place to start with defining a market to  
09:00:59 19 evaluate this merger.

09:01:01 20 And on the slide we have put up here, Your Honor  
09:01:04 21 can see that's where we started. In its complaint, the  
09:01:09 22 government first alleged a relevant market that spans from  
09:01:14 23 Georgia and its bordering states. And on the slide here we  
09:01:18 24 nickname it the narrow market. It's a collection of states  
09:01:22 25 in red on that supplier backyard map that we just looked at.

09:01:25 1 Now, we can see in the evidence and we can  
09:01:27 2 observe that competition between United and Imperial matters  
09:01:31 3 to customers beyond this narrow market. So we expanded the  
09:01:36 4 market out to these states and redefined a relevant market  
09:01:41 5 that's slightly broader and we nicknamed it the broader  
09:01:45 6 market.

09:01:46 7 Following the case law in the Horizontal Merger  
09:01:50 8 Guidelines, we defined both these markets based on where the  
09:01:54 9 customers are located. What this means, Your Honor, if a  
09:01:56 10 supplier has sales to customers located in one of these  
09:02:01 11 states, that supplier is in the market and we give that  
09:02:04 12 supplier market share. It doesn't matter where the supplier  
09:02:08 13 is located. That's well-accepted merger analysis.

09:02:12 14 We are focused on the competitive options  
09:02:16 15 available to customers. And as the evidence will show, it  
09:02:20 16 turns out more distant suppliers have a much lower market  
09:02:25 17 share in these markets than United and Imperial or Domino.  
09:02:29 18 It's harder for more distant suppliers to be competitive in  
09:02:33 19 the relevant market because of freight costs.

09:02:35 20 THE COURT: Where is Domino located?

09:02:38 21 MR. HANNA: Domino, they have several, they're  
09:02:42 22 pretty national. If you look in Florida, one of the  
09:02:46 23 triangles there is a Domino plant. Domino also has a plant  
09:02:49 24 in Baltimore, Maryland, and a plant in Yonkers, New York,  
09:02:53 25 and they have a refinery also in Louisiana. You can see

Domino is right around that region where the relevant markets are.

It's harder for more distant buyers to be competitive in these relevant markets because of freight costs. Competition tends to be regional and that's what United was indicating in that slide we looked at earlier. We can see this evidence of regional competition in the market shares. Let's take a look at some of the evidence in this case.

This map is looking at two different supplier backyard regions in the United supplier backyard map that we just looked at. We can see from this that United and Imperial have very high market shares in that collection of red states, the southeast, that's their backyard, so that makes sense. On the other hand, we can see that NSM who is really big out west, forty-seven percent market share, that also makes sense. NSM has sugar plants in Idaho and California and not surprisingly, NSM is very small in the southeast, only two percent. And we can see from this map where competition between United and Imperial is important to customers. It's the southeast region.

Now, Your Honor, this is not the first time a court has had to evaluate the effect of a merger involving two sugar producers. The Second Circuit did in *American Crystal v. Cuban American Sugar*. In that case there were

09:04:40 1 two alleged geographic markets, a narrow market in three  
09:04:43 2 states and a broader market spanning ten states. And the  
09:04:47 3 Second Circuit affirmed those markets noting that the  
09:04:52 4 merging companies were better situated to supply customers  
09:04:56 5 in those regions because it had quote a locational  
09:05:01 6 advantage, a locational advantage over other refiners in  
09:05:04 7 other parts of the country. These things freight dynamics  
09:05:08 8 have played in that sugar case, are alive and well in  
09:05:12 9 today's sugar market. We can look at the defendants' own  
09:05:15 10 documents to see that.

09:05:16 11 Here we have an e-mail from the senior  
09:05:19 12 vice-president of sales at Imperial, Patrick Henneberry, and  
09:05:21 13 Imperial is competing for a customer's business in Georgia,  
09:05:24 14 its own backyard. And we can see Mr. Henneberry says  
09:05:31 15 Imperial has a locational advantage over the competition for  
09:05:37 16 this customer in Georgia. Locational advantage, that's the  
09:05:41 17 exact same term that the Second Circuit used to describe the  
09:05:46 18 freight dynamics in that case. And Mr. Henneberry means the  
09:05:51 19 same thing, Imperial's freight costs will be lower, lower  
09:05:55 20 than the competition for this customer. And the evidence  
09:05:58 21 will show that freight dynamics informed Imperial's pricing  
09:06:03 22 strategy for this customer.

09:06:05 23 We can look at another document from United,  
09:06:07 24 this is United's director of strategic accounts, Eric  
09:06:12 25 Speece. And he'll testify later in this case as well. And

09:06:15 1 they're competing for a customer in Jacksonville, Florida.  
09:06:20 2 We can see from the highlighted text that he says United has  
09:06:23 3 a significant freight disadvantage over one competitor in  
09:06:27 4 Savannah, Georgia, and that's why United lowered its price.  
09:06:31 5 The one competitor he's referring to is Imperial who has a  
09:06:34 6 plant in Savannah, Georgia. So United thought Imperial  
09:06:39 7 would have a lower freight cost than this customer, a  
09:06:43 8 freight disadvantage, so United preemptively lowered its  
09:06:48 9 price out of the gate to be more competitive to Imperial.  
09:06:51 10 This shows how freight cost effects price United  
09:06:54 11 competitiveness to reach this customer. This shows  
09:06:56 12 Imperial's mere presence in this market is constraining  
09:06:59 13 United's price.

09:07:01 14 Your Honor will also hear from customers on this  
09:07:03 15 topic. They will say that transportation cost effects the  
09:07:07 16 options available to them at competitive prices. So all of  
09:07:11 17 this ordinary course evidence will show that sugar markets  
09:07:14 18 are regional and that's largely due to freight costs.

09:07:17 19 So now, how does the government establish its  
09:07:21 20 prima facie case that there is a reasonable probability that  
09:07:24 21 the merger would produce anticompetitive effect in these  
09:07:27 22 relevant markets? To prove its case, the government can  
09:07:31 23 establish a presumption that the merger is anticompetitive.  
09:07:34 24 And there is two ways that the government can establish this  
09:07:37 25 presumption. First, market shares, market shares alone can

09:07:44 1 establish a presumption of a post-merger market share of  
09:07:49 2 thirty percent is enough to trigger this presumption, that  
09:07:52 3 is what a court in this district in the *Energy Solutions*  
09:07:55 4 case held following Supreme Court precedent.

09:07:58 5 So we can -- there is a second way to establish  
09:08:02 6 a presumption and that's based on market concentration.  
09:08:06 7 Courts look at market concentration using another analytical  
09:08:10 8 tool used the Herfindahl-Hirschman Index or HHI. Courts  
09:08:16 9 rely on this HHI concentration routinely because it's a good  
09:08:21 10 indicator of the likely effect of competition on a merger.  
09:08:24 11 We can see that the Third Circuit in the FTC Hackensack case  
09:08:29 12 just affirmed this. There is presumption of harm in merger  
09:08:34 13 if the post merger HHI concentration is above 2,500, and the  
09:08:38 14 increase in that concentration is more than 200.

09:08:41 15 The experience has shown that the more  
09:08:46 16 concentrated the market the less competition there is. Less  
09:08:49 17 competition means higher prices and lower quality and  
09:08:54 18 service. So let's take a look at the market shares in HHI  
09:08:59 19 and our case. We can see here on the slide for both  
09:09:02 20 relevant markets we will establish the presumption. On the  
09:09:07 21 left we have the market shares, and in a narrow market, the  
09:09:10 22 post-merger market share of United will be 54 percent. And  
09:09:15 23 in the broader market, United post-merger market share will  
09:09:18 24 be 46 percent. Well above the presumption. The same with  
09:09:21 25 HHI as we can see in both relevant markets, well above the



09:09:23 1 presumption.

09:09:24 2 Now, we expect the defendant to quibble over  
09:09:28 3 where we draw the boundaries of the relevant markets, but it  
09:09:32 4 doesn't matter. The evidence will show that the precise  
09:09:35 5 boundaries do not change the outcome of this analysis. We  
09:09:39 6 can add states but the picture is the same. United's market  
09:09:43 7 share will be significant, more than 30 percent. The  
09:09:47 8 post-merger market will be concentrated and there will be a  
09:09:51 9 dramatic increase in concentration and the market will be  
09:09:54 10 dominated by two equally large suppliers, United and Domino.  
09:09:58 11 And as I said, in the Hackensack case, the Third Circuit  
09:10:02 12 just reaffirmed last month that courts need no further  
09:10:06 13 evidence than this market share analysis, full stop, to  
09:10:10 14 establish the presumption.

09:10:14 15 And what this means Your Honor, once this  
09:10:18 16 presumption is established the burden shifts to the  
09:10:22 17 defendant to try to produce evidence that the market share  
09:10:26 18 statistics do not paint an accurate picture of the merger's  
09:10:30 19 probable effects on competition. The defendants will not be  
09:10:34 20 able to do that.

09:10:38 21 So Your Honor, we could rest our case on  
09:10:42 22 establishing a presumption of harm, but we will not do that.  
09:10:46 23 On top of the market shares that HHI concentration analysis,  
09:10:50 24 we will show additional evidence that this merger would  
09:10:54 25 likely cause harm. Earlier, I showed Your Honor some

documents from the defendant illustrating current head-to-head competition between United and Imperial and how that has been driving prices lower. That is direct evidence that strengthens this presumption that the merger would be anticompetitive. In addition to this evidence, the evidence will show that competition between United and Imperial is likely to only intensify in the future, if they remain independent competitors. Independent of this merger, United is looking to compete harder in the southeast and United was going to put resources into doing that. That's what United's own documents will show. And we have some of that evidence here on the slide that we have up on the public screen. On the left side we have an e-mail from United's vice-president of strategy, Steve Hines. He also will testify in this case. And we can see United is considering ways to compete harder in the southeast, SE products, that means selling more sugar in the southeast. And we can see that the goal is to attack the market like Chicago and that market is considered the southeast.

Chicago in that e-mail is a reference to a sale strategy that United put in place in the Chicago area to increase its profit and we can see on the documents on the right side their claim to deploy that Chicago strategy to the southeast, we can see that document, southeast strategy.

To support this strategy, United's top

09:12:23 1 executives recommended adding equipment, equipment for  
09:12:27 2 bagging at the Clewiston Refinery so it could increase its  
09:12:34 3 sales to customers in the southeast and they recommended  
09:12:37 4 hiring sales manager to support this expansion. United has  
09:12:40 5 not yet moved forward with this expansion and the testimony  
09:12:42 6 will show that rather than doing the hard work of competing,  
09:12:46 7 they're trying to acquire Imperial. Acquisition instead of  
09:12:51 8 competition.

09:12:53 9 Now, let's talk about coordinated effects. On  
09:12:59 10 top of losing the head-to-head competition between United  
09:13:03 11 and Imperial, we will present evidence that this merger  
09:13:06 12 would likely increase a risk of harmful coordinated effects.  
09:13:11 13 So what do we mean by coordinated effects, Your Honor?  
09:13:14 14 There are you different kind of coordinated conduct by  
09:13:18 15 competitors all of which tend to lessen competition. We all  
09:13:21 16 know that it's harmful for competitors to get into smoke  
09:13:26 17 filled rooms and to agree to raise prices, but competitors  
09:13:30 18 don't need to be in a smoke filled room to achieve the same  
09:13:34 19 result. One competitor can raise its price and the other  
09:13:37 20 competitors can see that happening in the market and they  
09:13:40 21 can realize that they would be better off raising their own  
09:13:43 22 prices instead of competing more aggressively, or  
09:13:46 23 competitors can take a step further and they can find ways  
09:13:49 24 to signal each other directly or indirectly to accommodate  
09:13:52 25 each other's pricing actions in the market. When evaluating

09:13:58 1 the effect of a merger, we worry about this kind of behavior  
09:14:01 2 because the fewer competitors there are, the easier it is  
09:14:05 3 for this type of behavior to be successful.

09:14:08 4 To show that the relevant markets in this case  
09:14:12 5 are vulnerable to this type of conduct the evidence will  
09:14:16 6 show that competitors, especially United and Domino, are  
09:14:19 7 already doing this kind of coordinated conduct that tends to  
09:14:24 8 lessen competition. Let's take a look at some of the  
09:14:27 9 evidence.

09:14:27 10 On the slide here, we have an e-mail from  
09:14:31 11 Domino's vice-president of industrial sales, Alan Henderson  
09:14:34 12 discussing a price quote to a customer. The evidence will  
09:14:37 13 show that one of Henderson's subordinates reports that they  
09:14:41 14 know Domino is competing against Domino and Imperial and he  
09:14:44 15 asked for authority to cut prices. But here in this e-mail  
09:14:48 16 we can see that Henderson refuses to cut prices as much as  
09:14:52 17 he would like to, and he says we would like to avoid sending  
09:15:00 18 out a signal to competitors that Domino is chasing business  
09:15:04 19 and lowering pricing. What this means is Domino was not  
09:15:08 20 willing to cut its price for this customer. We can see here  
09:15:12 21 in this e-mail, Domino is trying to keep prices high and  
09:15:16 22 he's counting on his few remaining competitors to do the  
09:15:20 23 same. But the evidence will show Imperial was willing to  
09:15:24 24 lower its price. We have redacted the name of this customer  
09:15:28 25 and you will hear from this customer later at trial and the

evidence will show that Imperial was willing to drop its price for this customer for this bid. This pulling of punches is textbook, textbook coordinated activity that tends to lessen competition in the market. With Imperial out of the mix, this strategy is likely to be more successful. And United and Domino don't just stop at this type of coordination, they use a go between, Richard Wistisen, who is supposed to be some sort of consultant. They use him as a conduit to exchange pricing and they are selling capacity information.

You will see that evidence that United and Domino, who are supposed to be competitors have been telegraphing their pricing strategy to one another while providing competitively sensitive information to this go between, Wistisen. Let's take a look at just one of these e-mail exchanges. We can see this go between, Wistisen, e-mailed United and Domino less than an hour apart, he asked virtually the same question, what are you hearing on prices.

On the next slide we can look at United and Domino's responses to Wistisen. On the left, we can see United structure response to the go between, United shares its current pricing information and goes on to share United's future pricing plan saying that United will probably go higher given our strong sold position. Sold position means selling capacity. How much sugar has United

09:17:03 1 sold so how much more sugar does United have left to sell.  
09:17:08 2 And the evidence will show with a strong sold position, you  
09:17:11 3 feel less pressure to discount prices. And this is really  
09:17:15 4 important, if you know your competitor has a large  
09:17:18 5 percentage of its available sugar, then they are less likely  
09:17:22 6 to compete aggressively by discounting prices. So you know,  
09:17:27 7 you are more likely to be successful in raising your own  
09:17:30 8 prices. On the right, we see Domino's response to this go  
09:17:35 9 between's question and we see Domino's share its pricing  
09:17:43 10 information. Dominoes also shared paid coverage that is 85  
09:17:44 11 to 90 percent, that's sold position.

09:17:47 12 At this point Your Honor, the go between has  
09:17:50 13 received pricing information from United and from Domino.  
09:17:53 14 So now, what does he do with it? We can see that on the  
09:17:55 15 next slide. The next morning, Wistisen takes this Domino  
09:18:00 16 pricing information and selling capacity and he sends it  
09:18:03 17 back to United and Wistisen writes here in this e-mail, ASR  
09:18:04 18 is saying that prices are going up, he provides the specific  
09:18:13 19 numbers and their sold position.

09:18:15 20 And now we go to the next page we can see  
09:18:19 21 Wistisen does what he does with United information, we see  
09:18:22 22 here Wistisen takes the United pricing information and sends  
09:18:23 23 it back to Domino, he confirmed that United said that they  
09:18:30 24 will "probably be taking prices higher given strong sold  
09:18:32 25 position." How can this kind of information exchange we see

09:18:40 1 here lead to less competition in the market? When you know  
09:18:44 2 your competitor's prices or that your competitor is raising  
09:18:48 3 prices, it's easier to avoid a price fight.

09:18:52 4 The evidence will show that Wistisen routinely  
09:18:56 5 communicated with both United and Domino about their  
09:18:59 6 pricing, their pricing strategies and about market sold  
09:19:02 7 position. This information, these information exchanges are  
09:19:05 8 powerful evidence that the sugar market is already  
09:19:08 9 vulnerable to coordinated conduct. United and Domino have  
09:19:13 10 demonstrated the means and the incentives to coordinate  
09:19:17 11 their pricing. That means that mergers in this industry  
09:19:20 12 have an especially high risk of making this kind of  
09:19:23 13 coordinated behavior even worse just because there is one  
09:19:27 14 less company involved. This is where Judge Posner warned  
09:19:31 15 about in the Seventh Circuit, HCA versus FTC, why  
09:19:34 16 competitors routinely exchange pricing information, we are  
09:19:41 17 entitled to worry even more about large mergers in the  
09:19:47 18 industry.

09:19:47 19 Now, Your Honor, we expect defendants to try to  
09:19:50 20 wash their hands of this evidence by saying they're merely  
09:19:54 21 exchanging spot prices. Now the antitrust laws do not have  
09:19:58 22 an exception for exchanging current spot pricing, and it  
09:20:02 23 doesn't use make it okay to use a go between like  
09:20:06 24 Mr. Wistisen to do this exchanging. But in any event as we  
09:20:10 25 saw in these e-mail exchanges that we have on the slide, the

evidence will show that these exchanges go well beyond exchanging current spot pricing. United and Domino shared future pricing strategies and they divulge their selling capacity information, that's coordination.

Now all of this evidence, the competitive effects from the head-to-head competition to the loss of expected increase in competition, to this evidence of coordinated activity, all of that evidence is consistent with and it bolsters the statistical evidence that this merger is presumptively unlawful. So that evidence will establish your prima facie case and then the burden will shift to the defendants to rebut that evidence. But none of their arguments will discredit the market shares or the concentration analysis that the government will put forth in this case.

Let me address just a few of their defenses. We expect defendants to say we should treat distributors just like sugar producers are treated. Distributors have to buy sugar from the sugar producers. This argument from the defendants, distributors are dependant on sugar producers. The evidence will show the following. To reach customers sugar first needs to be refined. Distributors have no refining capacity, nor independent access to sugar. Distributors must first buy the sugar from producers at arm's length and the evidence will show that distributors



09:21:50 1 have the ability to adjust their pricing to encumber the  
09:21:55 2 distributor's ability to sell.

09:21:56 3 On the screen, Your Honor, we have a document  
09:21:58 4 prepared for the United board of directors and it's  
09:22:01 5 regarding a strategy in Chicago. And that strategy entailed  
09:22:08 6 reducing the amount of sugar it sold to distributors in the  
09:22:11 7 Chicago area. In turn United increased the price of the  
09:22:16 8 sugar it did sell to distributors in the area. So from this  
09:22:19 9 evidence, we can see that distributors are subject to the  
09:22:21 10 market power of producers from which they have to buy the  
09:22:23 11 sugar, similar to any other customer.

09:22:27 12 We also expect defendants will claim there are  
09:22:31 13 small efficiencies, but the Third Circuit is skeptical that  
09:22:35 14 such a defense exist. And it also set a high bar to meet an  
09:22:39 15 efficiency defense. And defendants will not be able to  
09:22:41 16 overcome that high bar.

09:22:45 17 And finally, Your Honor, let me address the  
09:22:47 18 notion that more government regulation, the notion that more  
09:22:51 19 government regulation is going to solve the problem. This  
09:22:52 20 ignores the commercial reality that competition still  
09:23:00 21 matters in the sugar industry. Even regulated industries  
09:23:04 22 need competition. And the Supreme Court has made clear that  
09:23:06 23 competition still matters in regulated industries.

09:23:12 24 Now, I want to be clear, USDA regulation is a  
09:23:14 25 market fact. USDA regulation puts the price first and

09:23:23 1       foremost, but USDA's role does not displace competition.

09:23:27 2       USDA regulation is no substitute for the enforcement of

09:23:33 3       antitrust laws. We don't rely on government to deliver the

09:23:36 4       sugar, nor set the price of sugar.

09:23:38 5               THE COURT: But they're setting a floor, meaning  
09:23:41 6       what, they can't charge less?

09:23:43 7               MR. HANNA: They set a price floor, effectively  
09:23:46 8       a price floor, the price of sugar is never going to below a  
09:23:51 9       certain price. There is no ceiling on that. What we're  
09:23:54 10       worried about is higher prices.

09:23:54 11               THE COURT: I understand, but they can't go  
09:23:56 12       below that price, so -- right, the government will not let  
09:24:01 13       them sell below that price.

09:24:03 14               MR. HANNA: Well, effectively they won't because  
09:24:07 15       the producers could forfeit, think of it as loan program so  
09:24:11 16       effectively they could forfeit all the sugar and the  
09:24:15 17       government would then have to sell that sugar. That's why  
09:24:17 18       effectively it's a price floor. What we're concerned about  
09:24:21 19       in this merger --

09:24:22 20               THE COURT: I know what you're concerned about.  
09:24:24 21       I think it is kind of funny that there is a floor meaning  
09:24:27 22       you can't go below something and yet you're worried about  
09:24:32 23       price going too high. Right?

09:24:32 24               MR. HANNA: Right, because the USDA regulations  
09:24:35 25       does not have any -- does not --

09:24:40 1 THE COURT: I know it doesn't cap it, but they  
09:24:44 2 couldn't give it away. Never mind. We'll get to it later.  
09:24:47 3 Go ahead.

09:24:49 4 MR. HANNA: We will show evidence at this trial,  
09:24:53 5 Your Honor, that suppliers and customers are negotiating  
09:24:57 6 every day to determine the price of sugar. In America we  
09:25:01 7 rely on competition to set prices. Defendants are asking us  
09:25:06 8 to trust regulations, but the law tells us to trust  
09:25:11 9 competition. The very argument from the defendants will not  
09:25:14 10 rebut the presumption. Competition between United and  
09:25:20 11 Imperial matters today and it will continue to matter in the  
09:25:23 12 future. We seek to prevent the elimination of this  
09:25:27 13 competition. Therefore, when the evidence is all in, we  
09:25:31 14 will ask Your Honor to enjoin the merger between US Sugar  
09:25:35 15 and Imperial.

09:25:36 16 Thank you for your time and consideration.

09:25:37 17 THE COURT: Thank you.

09:25:41 18 MR. BUTERMAN: Good morning, Your Honor. Larry  
09:26:12 19 Buterman on behalf of US Sugar. And I am going to be  
09:26:15 20 providing the main presentation for the defendants and then  
09:26:17 21 afterward my colleague, Mr. Tim Cameron, will follow-up with  
09:26:22 22 some brief words on behalf of Imperial.

09:26:23 23 Your Honor, this case is about one thing and one  
09:26:27 24 thing only, will US Sugar owning Imperial lead to  
09:26:30 25 substantially higher sugar prices? In other words, is

Imperial today a stand-alone entity keeping prices significantly lower in this industry than they would be otherwise?

Now, the government just presented a theory based on market shares and legal presumptions. It's a theory that focuses on an arbitrary set of states and only looks at certain suppliers and customers within those states, and actively ignores everything else.

But what I am going to talk about today is not theory but rather reality, and specifically the real world facts and commercial realities of the sugar industry, and the parties to this transaction, US Sugar and Imperial. And it's critical that we talk about facts instead of theory because at the end of the day it's the facts that explain why this transaction simply cannot lead to higher prices. We will show that the government's theory is illogical and the evidence simply does not support it.

When I say the evidence, let me be clear what I'm talking about. Neither the documents, the witnesses, nor the industry experts back up the theory that the government is postulating. Let me take each of those in turn.

First, there are no documents indicating that US Sugar's acquisition of Imperial is motivated by a desire to eliminate competition or to raise prices, or that US Sugar,

its marketing cooperative United or frankly anyone else in the industry thinks that that's going to happen and that's important because successful government challenges typically focus on contemporaneous evidence that the merging parties and others believe that the transaction is going to substantially lessen competition and lead to higher prices.

Second, unlike the typical merger challenge, we're not going to hear from a parade of customers complaining about this deal or asserting that it's going to lead to higher prices. Customers instead are going to testify that they have plenty of options when it comes to purchasing sugar. And that this transaction simply will not change that.

And third, and perhaps most uniquely, here there are industry experts at the USDA who regulate the sugar industry and the only one that we're going to hear from is Dr. Barbara Fecso who is the Ph.D. economist who runs the country's sugar program. And Dr. Fecso will testify that based on her twenty-five years of real world experience analyzing the industry, that she believes contrary to the government's theory that this transaction will benefit the marketplace and not lead to higher prices or other harms.

Now, at the same time, Dr. Fecso is going to testify that even if prices were to go up in the future as a result of this deal, that the government has the tools

09:29:32 1 available to remedy that themselves.

09:29:35 2 Your Honor, if the government's theory were  
09:29:40 3 straightforward and correct as they claim, they would have  
09:29:42 4 support, but the lack of documents, customer testimony, and  
09:29:45 5 backing from the regulatory agency that oversees the sugar  
09:29:49 6 industry, those are glaring evidentiary failures. And they  
09:29:53 7 highlight that the government's case just does not comport  
09:29:56 8 with industry reality.

09:29:58 9 And the reason that's critical is because in the  
09:30:01 10 country's most well-known merger case, Brown Shoe, the  
09:30:05 11 Supreme Court noted that merger analysis has to be pragmatic  
09:30:10 12 and factual, it has to correspond to commercial and industry  
09:30:14 13 realities, it has to be grounded in common sense. And  
09:30:18 14 respectfully the government's case here is not.

09:30:21 15 So with that said, what I would like to do this  
09:30:24 16 morning is first discuss three commercial realities that  
09:30:28 17 help explain why the government's theory does not make sense  
09:30:31 18 in the real world.

09:30:33 19 Second, I am going to provide some background on  
09:30:36 20 why US Sugar is actually seeking to acquire Imperial. And  
09:30:40 21 third, I want to discuss some of the key issues relating to  
09:30:43 22 the government's market definition and competitive effects  
09:30:46 23 analysis.

09:30:49 24 Let's begin with the commercial realities. And  
09:30:52 25 the fundamental reality of the sugar industry that the

09:30:55 1 government ignores is that sugar flows. Ultimately, what we  
09:30:59 2 will show is that the flow of sugar is critical to  
09:31:02 3 understanding why the government's proposed geographic  
09:31:05 4 market in this case doesn't work and is truly gerrymandered.  
09:31:09 5 But for now just focus on the underlying facts. Sugar is  
09:31:13 6 made in only two parts of the country. Sugar is produced  
09:31:16 7 from beets and in cold climates up north in the area known  
09:31:21 8 as the Red River Valley of Minnesota and North Dakota and  
09:31:25 9 nearby states like Wyoming, Michigan and Montana; while  
09:31:30 10 sugar made from cane is produced down south in areas like  
09:31:34 11 Florida, Texas, Georgia and Louisiana. And the resulting  
09:31:38 12 sugar that comes from beets and cane is chemically  
09:31:42 13 identical.

09:31:46 14 Now, despite the fact that sugar is only made in  
09:31:50 15 a limited number of states, sugar flows throughout the  
09:31:54 16 entire country. Sugar from up north flows down to customers  
09:31:58 17 in the central states, flows over to the southeast and flows  
09:32:02 18 across to the northeast. While the sugar produced down  
09:32:06 19 south flows up the East Coast through the southeast and also  
09:32:10 20 to the central states. And at the same time sugar produced  
09:32:14 21 up north and south is also making its way all the way to the  
09:32:18 22 West Coast.

09:32:22 23 Now, sugar is flowing as companies are  
09:32:26 24 constantly adjusting their distribution plans in order to  
09:32:30 25 ensure that they're delivering the products in the most

09:32:26 1 efficient manner. Companies are taking advantage of  
09:32:30 2 inexpensive rail freight and a network of transportation to  
09:32:34 3 ship sugar across the country. What you'll see on these  
09:32:37 4 slides, Your Honor, are a few ordinary course documents  
09:32:41 5 where industry participants recognize the reality of sugar  
09:32:45 6 flowing. And I mention this because the government spent a  
09:32:49 7 lot of time on slides that they say -- that they claim  
09:32:52 8 supports one of their proposed markets.

09:32:55 9 Well, this is a slide from the same  
09:32:57 10 presentation, in fact the slide that comes right after the  
09:32:59 11 one they showed you. And it's not the only one, Your Honor.  
09:33:01 12 There other slides in this presentation and others, and what  
09:33:03 13 they show is that industry participants look at the market  
09:33:13 14 in numerous different ways. But regardless, regardless of  
09:33:15 15 how they look at it, what they all recognize is that sugar  
09:33:21 16 flows in and out of regions easily. And it's not just that  
09:33:28 17 sugar is flowing within this country, sugar is also flowing  
09:33:31 18 into this country. Today there are forty countries that are  
09:33:37 19 shipping sugar into the United States and are able to do so  
09:33:41 20 at competitive prices.

09:33:42 21 Now, the reason why sugar flowing is so critical  
09:33:47 22 is because as we heard, the government's theory hinges on  
09:33:50 23 the idea that after US Sugar acquires Imperial, United will  
09:33:52 24 be able to raise prices in the government's claimed market  
09:33:54 25 which incidentally is not that market, Your Honor. And



09:34:03 1 companies will not be able to ship sugar into the southeast  
09:34:06 2 to defeat those price increases. But the reality today is  
09:34:11 3 that virtually every customer in the government's geographic  
09:34:16 4 market solicits bids from sugar companies all across the  
09:34:20 5 United States, both those located within the government's  
09:34:22 6 relevant markets and those outside.

09:34:24 7 And as a result of that, Your Honor, as you can  
09:34:27 8 see right here, under current market prices, significant  
09:34:31 9 amounts of sugar are being shipped into the government's  
09:34:35 10 relevant markets from locations all across the country.

09:34:41 11 And if there is any doubt about this point, we  
09:34:44 12 can just look at the government's complaint. And here is a  
09:34:48 13 chart from their complaint. And if you look at those blue  
09:34:52 14 boxes, Your Honor, what they show is that United is actually  
09:34:56 15 shipping more sugar to customers in the government's  
09:35:00 16 proposed southeast market from those beet producers up north  
09:35:04 17 in Minnesota, Montana, North Dakota and Wyoming, they are  
09:35:11 18 shipping from US Sugar's facility in Clewiston, Florida  
09:35:14 19 which is located in the government's proposed southeast  
09:35:18 20 market. This chart also shows a couple of other things,  
09:35:22 21 including that ASR and LSR are shipping in sugar from  
09:35:26 22 Louisiana and NSM is shipping in sugar from the same states  
09:35:30 23 up north as United. In fact, in 2020, close to half of the  
09:35:34 24 sugar sold to customers in the southeast came from suppliers  
09:35:38 25 located outside of the government's alleged relevant market.

09:35:47 1 Counsel in his opening said that competition is  
09:35:51 2 regional, but how is the competition regional if there is as  
09:35:56 3 much sugar being sold from outside the region as within, it  
09:36:00 4 just doesn't make any sense. And if that much sugar is  
09:36:05 5 already pouring into the southeast, then if United were to  
09:36:09 6 try to raise prices, well logically, suppliers would just  
09:36:13 7 sell more sugar into the area to get the benefit of those  
09:36:16 8 higher prices, and what economics and the law tell us is  
09:36:20 9 that if that were to happen, well then the prices would just  
09:36:25 10 not go up.

09:36:26 11 By the way, Your Honor, it's not just that there  
09:36:28 12 is sugar pouring into the southeast, but as I mentioned  
09:36:31 13 earlier, there is also sugar flowing through the southeast  
09:36:34 14 so companies like LSR who is in Louisiana, they ship their  
09:36:41 15 sugar from Louisiana up to customers in the northeast in  
09:36:47 16 railcars that go through the government's proposed southeast  
09:36:51 17 market. If prices were to go up, all they would need to do  
09:36:55 18 is literally stop their trains along the way and sell that  
09:36:58 19 sugar to customers for more money. But for the government's  
09:37:03 20 case to hold up, they have to establish that that just won't  
09:37:06 21 happen. That somehow the amount of sugar that's going into  
09:37:09 22 the southeast today, that that's a hard cap, that suppliers  
09:37:14 23 can't ship an ounce more sugar into that area or anyone's  
09:37:20 24 product out of it, even if prices were to go up  
09:37:22 25 significantly. The government has no evidence and that's

going to doom their case from the outset.

Now, the second commercial reality that explains why the government's theory just doesn't work here is that Imperial is not typically a competitive constraint on United or anyone else regardless of market shares or how close it is physically located to customers. And the evidence will show that Imperial's cost structure is higher than that of its competitors. And that is because unlike companies like US Sugar, ASR, Domino, LSR and others, Imperial just doesn't grow sugarcane, instead Imperial purchases raw sugar primarily from foreign sources and then refines it. To understand the magnitude of this issue, this is a chart which shows in 2021, how much more expensive it was for Imperial to get raw sugar than it was for US Sugar. What we can see on this chart, is that for US Sugar to get to the step of having raw sugar to refine, it cost about \$22 per hundred pounds. But for Imperial, that cost in 2021 was about \$29, roughly 30 percent higher.

Now, you'll hear from Mr. Gorrell, the CEO of Imperial, how the higher cost to acquire his raw sugar makes it extremely difficult for Imperial to compete on a regular basis with companies like United, Cargill, Domino, NSM and others, and indeed that's one of the reasons that Imperial's owners have decided to sell the company because a company that starts off with production costs that are

09:39:07 1 thirty percent higher than its competitors just is not going  
09:39:11 2 to be a competitive constraint in the market.

09:39:14 3 So how does this play out and affect Imperial's  
09:39:19 4 business? Let's take one example, Kraft Heinz. Kraft Heinz  
09:39:24 5 is responsible for almost all wholesale sugar purchased in  
09:39:27 6 Delaware. And as we know, Delaware is in the government's  
09:39:33 7 alleged southeast relevant market. And Kraft, they get  
09:39:36 8 their sugar shipped into Delaware from companies both within  
09:39:40 9 and outside of that alleged southeast. And of the companies  
09:39:44 10 that supply Kraft's Delaware facility, Imperial is located  
09:39:48 11 one of the closest. When you have look at the prices that  
09:39:52 12 Kraft is paying in 2022 for sugar delivered to its Delaware  
09:39:56 13 plant, what you see is the Imperial is the most expensive  
09:40:00 14 option and by a lot.

09:40:04 15 Your Honor, we did not put these numbers on the  
09:40:08 16 board but Your Honor has them in the material.

09:40:12 17 THE COURT: Okay.

09:40:16 18 MR. BUTERMAN: And they reflect something that  
09:40:20 19 we're going to see time and time again over the next several  
09:40:24 20 days, and that is that Imperial is just not typically a  
09:40:28 21 competitive constraint when it comes to sugar sales, no  
09:40:32 22 matter how close or how far it is from a customer. And  
09:40:36 23 unless the government can establish that Imperial is  
09:40:40 24 operating today as a significant competitive constraint, it  
09:40:44 25 cannot credibly contend that Imperial's acquisition is going

09:40:47 1 to substantially impact competition. When we move away from  
09:40:54 2 theories and market shares and legal presumptions and we  
09:41:00 3 then we look at what the industry participants actually  
09:41:03 4 believe and experience, What we see is the pricing reality  
09:41:08 5 that's taking place with Kraft in Delaware, that's something  
09:41:10 6 that almost every customer that we will hear from in this  
09:41:14 7 case echoes. Let's just look at a few. And actually I  
09:41:19 8 shouldn't say we're going to look at a few, we're going to  
09:41:22 9 look at all of them, Your Honor. These are all of the  
09:41:24 10 customers that will appear in this case.

09:41:26 11 This is Brill, a bakery ingredients company and  
09:41:30 12 we'll hear from Brill that the Imperial's prices to Brill's  
09:41:33 13 facility in Georgia, which is also where Imperial's facility  
09:41:38 14 is located, have been higher than suppliers much further  
09:41:42 15 away, including NSM that beet producer all the way up north.  
09:41:47 16 We're going to hear from Hostess that Imperial was higher  
09:41:50 17 priced than other suppliers, even to Hostess's Georgia's  
09:41:56 18 facility. And because Imperial is so high priced, the  
09:41:59 19 representative couldn't even say whether he preferred to  
09:42:04 20 have Imperial remain independent in the market.

09:42:06 21 We'll hear from McKee who makes Little Debbie  
09:42:10 22 snack cakes, who will say that they haven't purchased any  
09:42:15 23 sugar from Imperial since at least 2016 because Imperial was  
09:42:20 24 not competitive on price and the prices that McKee has  
09:42:24 25 received since 2016 have not been influenced by Imperial.

09:42:28 1 I missed one. Let's go back. We'll hear from  
09:42:30 2 Danone, the makers of Dannon Yogurt products who have a  
09:42:36 3 plant in Florida and they'll testify that they haven't  
09:42:39 4 bought from Imperial in four years and that Imperial doesn't  
09:42:42 5 compete in their business. We'll hear from Post that  
09:42:45 6 Imperial hasn't been competitive on pricing, to the Post  
09:42:50 7 North Carolina facility even though it's one of the closest  
09:42:55 8 refineries.

09:42:56 9 We're going to hear from General Mills and we  
09:43:00 10 have blocked out their actual testimony again because they  
09:43:02 11 requested it for broadcasting, and what they are going to  
09:43:03 12 testify is going to be that they didn't award any bulk sugar  
09:43:08 13 contracts this year to Imperial. In 2021 they purchased  
09:43:12 14 more refined sugar from at least six companies. We're going  
09:43:17 15 to hear from Kraft that of the thirty-seven plants, Imperial  
09:43:20 16 is only servicing that one Delaware facility and that it's  
09:43:21 17 by far the most expensive supplier. That is what all the  
09:43:21 18 customers in this case are going to testify about what is  
09:43:31 19 going on in the real world, all except for one exception, a  
09:43:32 20 small North Carolina peppermint puff manufacturer named  
09:43:40 21 Piedmont, whose purchaser has testified he has made no  
09:43:42 22 effort to understand what his supplier options are.

09:43:52 23 Now, typically the concern in merger challenges  
09:43:54 24 is that a company that was keeping prices low is being  
09:43:58 25 removed from the market, but the government hasn't even

09:44:03 1 attempted to claim that Imperial is keeping prices low in  
09:44:07 2 the market. As the customer observations that we just  
09:44:11 3 looked at made clear, that's just not what's going on here.  
09:44:14 4 But for the government's theory to work, they must establish  
09:44:17 5 that by purchasing the high cost supplier in this industry,  
09:44:20 6 somehow that's going to lead to higher prices.  
09:44:24 7 Respectfully, that makes no sense. As defendants' expert,  
09:44:29 8 Dr. Hill, will testify, when you're charging more than  
09:44:33 9 everyone else, which tends to be the case with respect to  
09:44:36 10 Imperial, you just aren't a competitive constraint on others  
09:44:40 11 prices. And for that reason as well, this acquisition  
09:44:44 12 simply will not lead to higher prices.

09:44:48 13 Now, there is a third and final commercial  
09:44:52 14 reality that I want to talk about which explains why the  
09:44:55 15 government's theory here just doesn't work. And that  
09:44:58 16 reality is that United, which is the entity that sells US  
09:45:02 17 Sugar's sugar, United is structured in such a way that it  
09:45:05 18 actually cannot do the very thing that the government's  
09:45:09 19 expert says is necessary to raise prices which is to  
09:45:12 20 withhold supply from the marketplace.

09:45:16 21 We will hear more about this during trial, but  
09:45:20 22 the key thing to understand is that United has a different  
09:45:23 23 structure than most businesses in the United States. United  
09:45:26 24 is an agricultural cooperative, and as such it's obligated  
09:45:30 25 to sell all the sugar that its members produce. Now, at the

09:45:37 1 same time, United's members are each incentivized to produce  
09:45:43 2 as much sugar as they can because they get paid for all the  
09:45:46 3 sugar they produce. So basic economics, which is confirmed  
09:45:51 4 by the government's expert, it dictates to get those higher  
09:45:54 5 prices what you have to do is you have to withhold supply,  
09:45:58 6 you have to sell less sugar, but United simply can't do  
09:46:02 7 that, it doesn't have the power to stop selling sugar.  
09:46:05 8 Again, the real world facts here just don't support the  
09:46:08 9 government's theory of harm.

09:46:11 10 So with that backdrop, what I would like to do  
09:46:15 11 now is just briefly talk about US Sugar and why US Sugar is  
09:46:20 12 actually doing this deal. To begin, Your Honor, this is US  
09:46:23 13 Sugar. It's a ninety-year old farming company based in  
09:46:27 14 Clewiston, Florida which is halfway between Fort Myers and  
09:46:31 15 Palm Beach. US Sugar grows sugarcane, sweet corn, citrus  
09:46:37 16 and other vegetables and the company is owned primarily by  
09:46:41 17 its farmers and by its employees and a large charitable  
09:46:44 18 organization, it's run by Dr. Bob Buker, who is here and  
09:46:48 19 will testify in a couple of days. As you'll hear from  
09:46:52 20 Mr. Buker it was his decision for US Sugar to purchase  
09:46:57 21 Imperial. He will testify to the many rationales, but it  
09:46:59 22 all starts with one simple fact. Today, US Sugar's farmers  
09:47:04 23 grow more sugarcane than they can make into refined sugar  
09:47:08 24 and they need additional refining capacity.

09:47:12 25 At the same time, Imperial because of its higher



09:47:13 1 production costs and the lack of a steady supply of sugar,  
09:47:17 2 of raw sugar, they just can't operate as efficiently as they  
09:47:23 3 would like to. This transaction, it solves that imbalance.  
09:47:27 4 After this acquisition, US Sugar is going to modernize and  
09:47:31 5 increase the efficiency of the Imperial plant and use it to  
09:47:35 6 process the excess raw that it previously couldn't process.  
09:47:39 7 And that's going to result in more sugar being produced in  
09:47:42 8 the very geographic area that the government says it's  
09:47:45 9 concerned about. And as the government's economic expert  
09:47:51 10 admits, if you're going to be producing more of a product,  
09:47:54 11 the price of it is going to go down. It's another reality  
09:47:59 12 that just shows why the government's theory doesn't work.

09:48:03 13 Now, beyond that there are a host of other  
09:48:06 14 reasons why US Sugar decided to acquire Imperial and why it  
09:48:10 15 believes this transaction will be beneficial. And I have  
09:48:13 16 listed them here, and Mr. Buker is going to testify about  
09:48:16 17 them later this week. And as we'll see, these  
09:48:20 18 justifications will benefit US Sugar, Imperial Sugar and  
09:48:24 19 their customers by providing them with enhanced surety of  
09:48:28 20 supply and other benefits that companies can't generally  
09:48:32 21 achieve on their own without the deal.

09:48:35 22 So with that, I now want to take my remaining  
09:48:38 23 time to focus our discussion on a couple of elements of  
09:48:42 24 Section 7 analysis, and specifically market definition and  
09:48:45 25 competitive effects. And I'm going to begin with market

09:48:48 1 definition which is intended to allow the court to determine  
09:48:51 2 what product and what customers specifically may be impacted  
09:48:55 3 by the transaction.

09:48:56 4 Here as we're going to see, the government's  
09:48:59 5 market definition, it reflects numerous strategic choices  
09:49:05 6 which limit both the suppliers and the customers in the  
09:49:07 7 market and thereby inflate the parties' market shares. But  
09:49:11 8 like the rest of the government's theory, the choices made  
09:49:15 9 by the government simply do not align with how the industry  
09:49:19 10 or its participants operate. And that's important because  
09:49:23 11 the government has to establish both a relevant product  
09:49:25 12 market and a relevant geographic market. And if the  
09:49:29 13 government's market definition fails for any reason with  
09:49:32 14 respect to either of those, its case is over, we're done.

09:49:36 15 So let's look at product market. Now, normally  
09:49:40 16 a relevant product market contains just that, some sort of  
09:49:44 17 object, be it hydrogen peroxide, airline ticket software,  
09:49:50 18 soda or soybeans. Counsel here in its opening said  
09:49:54 19 repeatedly that the product market here is not in dispute,  
09:50:01 20 it's refined sugar. But that's not what they put in their  
09:50:05 21 complaint, Your Honor. Here is what they said. They  
09:50:10 22 defined the relevant product market as not only based on the  
09:50:14 23 object, namely refined sugar, but also based on who is  
09:50:18 24 making it and who is selling it.

09:50:22 25 Now, the experts are going to talk about this a

lot more in detail, but what's important to understand now is that the decision to focus on the production and sale of refined sugar as opposed to just refined sugar or the sale of refined sugar, well, that artificially limits the number of suppliers in this case dramatically by excluding all distributors and other entities that do not produce the sugar that they sell. In essence, by defining the market as the production and sale of refined sugar. It's a way for the government to try to make it seem like there are fewer competitors than there actually are. And frankly again it just does not make sense. The real world evidence is that customers today regularly solicit bids both from companies that produce their sugar alongside companies that do not, and they decide between the two when they make their purchasing decision. Even the government's witness, Piedmont, that peppermint puff company, they're going to testify that they do exactly that. They solicit bids both from those who would be within the government's relevant market and those who would not, alongside one another. But the government's market definition --

THE COURT: Is the government's market definition in your view, it leaves out distributors? Anything else?

MR. BUTERMAN: It leaves out distributors and it also creates a problem, Your Honor, in that there is a

question as to who actually is a producer of sugar versus who is a producer and seller. For instance, looking at this definition, actually neither United nor US Sugar is in the relevant market because one is the producer of the sugar, the other one is the seller. And that's a reality that happens in this industry a lot.

And part of the problem again, it goes back to this issue of looking at how the government assumes that price is going to be affected here. Because United isn't producing the sugar and has no say into how much sugar is being produced by its members, it just doesn't have those tools to affect price the way that the government contends. Our expert is going to talk about this a little bit, Your Honor, but you could run through virtually all the companies in the industry and there are numerous questions as to who is in, who is out, if you use this definition.

Now, one thing I want to just point out here is that the government's market definition, it treats every single distributor sale in the alleged relevant market as if it didn't happen. And that's regardless of price, customers or competition. So I understand that the government's position is well, in certain instances, a distributor may not really be as competitive with someone who produces their own sugar, but that's not the defining line that they take. They say because that's a reality in certain instances, we

09:53:46 1 have to discount every single distributor sale. There is  
09:53:50 2 not one distributor sale that they -- to a wholesale  
09:53:55 3 customer in the relevant markets that they count. And as  
09:53:59 4 that's a radical position that finds no support in the real  
09:54:04 5 world and it dooms the government's product market.

09:54:07 6 There is another problem with the government's  
09:54:10 7 product market and that's why while it artificially limits  
09:54:14 8 the number of suppliers, it also increases without any basis  
09:54:17 9 the number of customers who the government claims are going  
09:54:20 10 to be harmed.

09:54:21 11 So the government claims that the relevant  
09:54:24 12 product market here includes sugar sold to all wholesale  
09:54:31 13 customers. And wholesale customers are not just the  
09:54:34 14 industrial customers like Hostess or Danone that purchase  
09:54:39 15 sugar to make their products, it's also retail customers  
09:54:42 16 like Wal-Mart and Dollar General who purchase sugar in  
09:54:45 17 smaller packaging to resell them in their stores. And  
09:54:49 18 retail customers, they make up a significant portion of the  
09:54:53 19 customers in the government's claimed market.

09:54:56 20 As we will hear over the course of the next few  
09:55:00 21 days, in the real world, retail customers are viewed very  
09:55:05 22 differently from industrial customers. Companies have  
09:55:08 23 different sales personnel and sale strategy for retail  
09:55:12 24 customers as opposed to industrial customers and retail  
09:55:15 25 customers experience very different competitive options when

09:55:16 1 buying refined sugar. But there will be no evidence  
09:55:24 2 presented in this case from any retail customers. The  
09:55:29 3 government did not subpoena a single retail customer for  
09:55:33 4 documents or testimony, none will appear here. And so for a  
09:55:39 5 significant portion of the customers in the government's  
09:55:42 6 alleged relevant markets, the government simply has no basis  
09:55:47 7 for even claiming that they will be harmed by this  
09:55:50 8 transaction. This is another reason why the government's  
09:55:52 9 case fails.

09:55:53 10 So now I would like to turn to geographic market  
09:56:01 11 which is a topic that we are going to talk a lot about in  
09:56:05 12 this case. And I'm not going to focus today on a  
09:56:09 13 sixty-five-year old case from another jurisdiction that  
09:56:13 14 analyzed different markets, I'll save that for closing. But  
09:56:16 15 when we do talk about geographic markets, geographic markets  
09:56:21 16 are the areas where consumers can practically turn to their  
09:56:25 17 alternative sources of the product. And as we note here,  
09:56:29 18 the government has proposed two limited geographic markets,  
09:56:33 19 Georgia plus its surrounding states market and the states  
09:56:37 20 which the government refers to as the Southeast. Normally  
09:56:41 21 when the government proposes a market that has geographic  
09:56:45 22 boundaries, there is a logical reason why they do so. The  
09:56:49 23 product in question may be fragile, it may be hazardous, it  
09:56:53 24 may need to be refrigerated or it's difficult to package or  
09:56:57 25 difficult to transport long distances. But when it comes to

sugar, none of that is the case. Sugar is literally poured into railcars or trucks for transportation and it flows all across the country. And again, it also comes into this country from all across the world. In fact, the evidence will show that when it comes to transporting goods, there are few products that are as easy and cheap to transport in this country as sugar. The reality that sugar is so easy to transport, well, it's one of the reasons why almost half the sugar in the government's claimed geographic markets is able to come from outside those areas. That wouldn't be possible if what the government said about the cost and how difficult it is to transport sugar were true.

So that's why the theory makes no sense to begin with. So there really is no reason why the geographic markets here should be limited. But the government nonetheless claims that they are, and in doing so what we will see is they rely almost exclusively on their expert, Dr. Rothman, to support their theory. And as the evidence will show, this is a big problem for the government because Dr. Rothman did not conduct any analysis to determine if the alleged relevant markets were the right markets. Instead, as we can see on this chart, he merely took the markets that the government pled in its complaint and decided that they could, could constitute relevant markets under a test used in market definition called a Hypothetical Monopolist Test.

09:58:47 1 This matters because Dr. Rothman actually admits and he  
09:58:50 2 admitted during his deposition that his Hypothetical  
09:58:57 3 Monopolist Test it would confirm that any geographic market  
09:58:59 4 where Imperial and United both sell constitutes a relevant  
09:59:03 5 market from a single facility to a combination of states to  
09:59:07 6 the entire nation. With respect to Dr. Rothman, a test that  
09:59:16 7 includes everything and excludes nothing is not much of a  
09:59:19 8 test.

09:59:21 9 Now, Your Honor, we'll hear from Dr. Hill, the  
09:59:24 10 defendants' expert, that there are a number of choices in  
09:59:27 11 terms of which states the government included and which they  
09:59:30 12 excluded from a geographic market that simply do not make  
09:59:33 13 sense. States where Imperial sells significant amounts of  
09:59:36 14 sugar were left out of the proposed relevant markets while  
09:59:39 15 states where Imperial sells comparably less sugar were  
09:59:42 16 included. The government even excluded the state of  
09:59:45 17 Louisiana that has two refineries closer to about half the  
09:59:48 18 customers in the government's relevant markets than US Sugar  
10:00:01 19 and ASR's Florida refineries which that are within the  
10:00:04 20 proposed market. And they did that even though as they said  
10:00:07 21 in their opening, the proximity of suppliers to customers is  
10:00:10 22 a critical factor for their geographic market.

10:00:13 23 So as you can see here on this chart, for all  
10:00:16 24 the customers in the green area, and I just want to be clear  
10:00:19 25 that that entire colored area, that's the government's



relevant, proposed relevant southeast market, but for all the customers in the green, including those in Atlanta, Georgia, that LSR facility is closer to them than US Sugar's Louisiana and LSR are left out of the market.

Now, the government in its pretrial brief they tried to dismiss these choices by arguing that they reflect fuzziness around the borders which they say is permissible under the law, that's the word they use on the first page of their brief to describe their own geographic markets here. But respectfully, this is something very different than a debate about whether a particular state on the margin should or should not be included in a proposed market. Rather as you'll see this is an exercise that involved choosing and excluding states specifically for the purpose of being able to claim market shares high enough to give the government a legal presumption. There is nothing fuzzy about this. We'll hear from Dr. Hill that this is just not the way geographic market definition is done. By selecting the geographic market not based on industry recognition, but instead based on market shares, what the government did was render the test meaningless. Dr. Rothman was not determining what the relevant market was, but rather only whether the market that had been strategically chosen for him could be a relevant market using a test that could not be failed. Indeed Dr. Rothman, he can't even state which of

10:02:04 1 the two alleged relevant markets is more appropriate, even  
10:02:09 2 though one is completely contained within the other.

10:02:13 3 Now, these are by far not the only problems with  
10:02:16 4 Dr. Rothman's analysis as we'll discuss in a second, but  
10:02:20 5 they do highlight why the government's geographic markets  
10:02:25 6 fail.

10:02:25 7 This brings me, Your Honor, to competitive  
10:02:27 8 effects. And the Supreme Court said a long time ago in the  
10:02:32 9 case of International Shoe, that if you're trying to decide  
10:02:36 10 whether one company purchasing another is going to  
10:02:39 11 substantially lessen competition, one of the first things  
10:02:42 12 you need to do is determine how substantial they're  
10:02:46 13 competing today. And the government actually doesn't even  
10:02:49 14 dispute that this is the relevant question. They said so in  
10:02:53 15 their pretrial brief. Is the competition today between  
10:02:57 16 Imperial and United important? Their question. But as  
10:03:01 17 we'll see, all the government and its experts point to are  
10:03:05 18 some anecdotes about head-to-head competition between  
10:03:09 19 Imperial and United. In the opening, I counted four. So we  
10:03:13 20 went ahead and we asked the government's expert how often do  
10:03:17 21 Imperial and United actually compete head to head with one  
10:03:21 22 another, and remarkably he said he hadn't done the analysis.  
10:03:25 23 He didn't do the work.

10:03:31 24 Your Honor, this is another failure of proof,  
10:03:35 25 and it's a major one. The government is asking this Court

10:03:39 1 to block this transaction because it will supposedly  
10:03:43 2 substantially lessen competition, but the evidence will show  
10:03:47 3 that the government has no idea how substantial that  
10:03:52 4 competition between Imperial is to begin with. And this is  
10:03:56 5 despite the fact that the government has at least four  
10:03:59 6 years' worth of data from the merging parties and they spoke  
10:04:05 7 to 100 customers during their pre-lawsuit investigation and  
10:04:09 8 they took almost thirty-five depositions in this case. But  
10:04:12 9 neither the government nor its experts have any idea how  
10:04:16 10 often US Sugar and Imperial are competing with one another  
10:04:20 11 for any customer's business. And just to put it in  
10:04:24 12 perspective, there are 428 customers that we've been able to  
10:04:28 13 identify extremely conservatively in the government's  
10:04:32 14 Georgia plus market, and there are 543 customers that we  
10:04:36 15 have been able to identify conservatively in the  
10:04:40 16 government's southeast market. And they had four years of  
10:04:44 17 data. And we heard a total of four instances of competition  
10:04:48 18 during their opening.

10:04:52 19 Now, as we've seen, the industry realities, they  
10:05:00 20 support this idea that United and Imperial just aren't  
10:05:04 21 particularly close competitors. And that's a fact that even  
10:05:08 22 the government's economics back up. What we'll see is that  
10:05:12 23 the government's expert, Dr. Rothman, he did a test to model  
10:05:16 24 what was the extent or what's the extent of the price  
10:05:20 25 increase that he would think would result from this

transaction. And while Dr. Rothman was certainly attempting to show that this transaction would lead to a lot of harm, when he did his model all he came up with was that prices might go up three percent. Actually, Dr. Rothman's initial model it predicted much higher pricing increases, over fifty percent higher than what they ultimately arrived at. But what happened is Dr. Rothman had to admit that when he got that 6.8 percent there, he had used the wrong formula. And when he corrected it, it went to 3.2.

Now, obviously that's over fifty percent change. But what's also important is that it brought that number down below five percent. And that's important because experts and the government's own guidelines, they typically characterize findings of below five percent as small and insignificant.

There are a litany of other errors with Dr. Rothman's approach, and in fact, every time that Dr. Rothman has testified in a Section 7 case, on market definition or competitive effects, his findings have been rejected by the courts as being unreliable. And here, Dr. Rothman, he's predicting the same analysis, using the same models as he did in those other cases where the courts rejected him, and there is no reason why the results here should be any different.

So that leaves just the issue of coordinated

effects which looks to whether the competitors will be more likely to coordinate and implement higher prices together as a result of this transaction. And for all the reasons that we've talked about, we're never even going to get to coordinated effects because of all the problems with the market definition. But focusing on the government's theory here, it's largely that United and ASR, neither of whom are parties to this transaction, they share certain information with third-party analysts, and from that that the government argues once US Sugar owns Imperial, that United and ASR are going to stop competing with one another on bids in order to raise prices.

Once again, this is a claim and a theory that makes no sense in the real world. First, the information that's being provided to the analysts here, it's neither confidential nor competitively sensitive. It's information that's available on United's website and it's provided to customers on behalf. We're going to hear from the government's witness, Piedmont, that even they get this information freely from companies in the industry, they just ask them and it's provided.

And second, we're also going to hear that because again, that United is a cooperative, it actually can't do what the government theorizes, it can't stop selling sugar to get higher prices. And that's what the

10:08:34 1 government's theory is, it's nothing more. That's what  
10:08:38 2 their expert will tell us and you positively hear. His only  
10:08:42 3 theory of coordination is that after this transaction goes  
10:08:46 4 through that perhaps United and Domino are going to stop  
10:08:49 5 bidding on opportunities. United can't do that, it has to  
10:08:54 6 sell all the sugar that its members produce.

10:08:58 7 Now, the government mentioned sold positions in  
10:09:03 8 addition to these prices. And I also want to be clear that  
10:09:06 9 when we are talking about the prices, we're talking about  
10:09:10 10 spot prices. Over approximately 95 percent of the sales in  
10:09:14 11 this country are not made based on spot, they're based on  
10:09:18 12 long-term contracts. So we're talking about the remaining  
10:09:21 13 spot prices which again are the list prices. If somebody  
10:09:25 14 wanted to go into the market today and just buy some extra  
10:09:29 15 sugar because they needed it, and that's why it's readily  
10:09:34 16 available, it's not just that they're readily available and  
10:09:38 17 provided by the companies, they're also just published by  
10:09:41 18 these third-party analysts and they're used by everybody in  
10:09:44 19 the industry, customers and in fact the USDA. The USDA,  
10:09:48 20 they routinely communicate with these third-party analysts  
10:09:52 21 and publish their information. So if there really was  
10:09:56 22 something wrong with what's going on here in terms of  
10:10:00 23 publishing these spot prices or these sold positions, well,  
10:10:04 24 presumably the USDA, which is part of the plaintiff here,  
10:10:08 25 they would have said something.

10:10:14 1 Now this same theory of coordination, it was  
10:10:17 2 proposed by Dr. Rothman in a case brought by the Federal  
10:10:23 3 Trade Commission called Evonik. In that case they looked at  
10:10:27 4 a host of factors and what they ultimately determined was  
10:10:30 5 that Dr. Rothman's theory was just off base. As we're going  
10:10:34 6 to see over the next coming days, almost all of those same  
10:10:39 7 factors, they apply here. And they mean that Dr. Rothman's  
10:10:42 8 theory again just doesn't match the real world factors.

10:10:48 9 Finally, I want to talk for a minute about the  
10:10:50 10 USDA, because despite everything else, USDA does act as a  
10:10:54 11 backstop against any risk of anticompetitive effects. As we  
10:11:01 12 know, the sale of sugar in the United States is heavily  
10:11:03 13 regulated by the USDA and it's done to ensure that there is  
10:11:07 14 adequate supplies of raw and refined sugar available at  
10:11:11 15 reasonable prices. There it is, Your Honor, from the USDA.  
10:11:15 16 The USDA has numerous tools that allow it to control the  
10:11:19 17 supply of raw and refined sugar that's available for sale  
10:11:23 18 and they have been very explicit that they use these tools  
10:11:27 19 to cure high sugar prices.

10:11:29 20 Now, the only witness from the USDA who is going  
10:11:33 21 to testify here in this case is the economist who runs that  
10:11:37 22 program, and her name is Dr. Fecso. She knows this industry  
10:11:41 23 better than anyone, better than anyone in this courtroom,  
10:11:45 24 better than anyone in the United States. Her testimony will  
10:11:49 25 be that the government's theories here, they're simply

10:11:53 1 incorrect. In fact, Dr. Fecso believes that this proposed  
10:11:57 2 transaction is going to again benefit the domestic sugar  
10:12:02 3 industry and is likely to result in lower prices.

10:12:05 4 Now, the government doesn't really contest that  
10:12:08 5 if prices went up here that it could take action to fix  
10:12:12 6 those prices, but their argument is that this court, this  
10:12:17 7 court should block this transaction nonetheless because they  
10:12:21 8 might decide not to use those powers. Well, that's not a  
10:12:25 9 reason to employ the drastic and extraordinary remedy of  
10:12:30 10 preventing companies from completing their deal.

10:12:34 11 But in any event, the fact of the matter is that  
10:12:38 12 we'll hear the testimony of the CEO of United and  
10:12:41 13 Mr. Wineinger and others, sugar sellers, they're all aware  
10:12:45 14 that the government could take action to lower prices and  
10:12:48 15 that in and of itself acts as a deterrent that prevents them  
10:12:51 16 from even attempting to raise prices above a competitive  
10:12:54 17 level. It's another industry reality that doesn't comport  
10:13:00 18 with the government's theory.

10:13:01 19 With that, Your Honor, we look forward to  
10:13:05 20 presenting our evidence over the coming days and  
10:13:07 21 establishing that in the real world, US Sugar's acquisition  
10:13:11 22 of Imperial will benefit customers and consumers and that  
10:13:14 23 the government simply cannot come close to meeting its heavy  
10:13:20 24 burden of establishing that this transaction may  
10:13:22 25 substantially lessen competition.



10:13:24 1 Thank you.

10:13:25 2 THE COURT: Thank you.

10:13:29 3 MR. CAMERON: Good morning, Your Honor. Tim  
10:13:36 4 Cameron on behalf of the Louis Dreyfus Company and Imperial  
10:13:40 5 Sugar.

10:13:41 6 Your Honor, we join in Mr. Buterman's opening  
10:13:43 7 but with your permission I would like to take just five  
10:13:46 8 minutes to make five quick points as to what the evidence in  
10:13:49 9 this case will show regarding Imperial's view on its place  
10:13:51 10 in the industry, why it currently struggles to compete, and  
10:13:51 11 why it will continue to do so in the future, and why this  
10:14:01 12 merger is not anticompetitive.

10:14:01 13 The five points, Your Honor, are on the slide  
10:14:04 14 and I believe you have a copy in your book as well. Turning  
10:14:04 15 to point one, Your Honor, Imperial has no access to low cost  
10:14:15 16 domestically grown raw cane sugar. Instead, it must rely on  
10:14:21 17 high cost imported raw sugar to run its refinery. Imported  
10:14:21 18 raw cane sugar costs significantly more than the cost of  
10:14:29 19 domestic raw sugar.

10:14:32 20 Mr. Buterman during his opening referred to the  
10:14:32 21 fact that in 2021, he put up a chart, the cost of raw sugar  
10:14:32 22 to US Sugar was \$22 per hundred pounds, while for Imperial  
10:14:42 23 it was 29. But that figure is not static, Your Honor, and  
10:14:50 24 that problem is something that remains very much an issue  
10:14:54 25 today. Indeed today for Imperial, that cost has increased

10:14:59 1 in 2022 from \$29 to \$37 per hundred pounds. And that  
10:15:06 2 disparity, Your Honor, coupled with the fact that raw sugar  
10:15:11 3 cost is 70 to 80 percent of Imperial's total costs, is why  
10:15:17 4 Imperial's prices for refined sugar are almost always higher  
10:15:21 5 than other suppliers and often by a lot. That's not all,  
10:15:29 6 because supply of imported raw sugar is restricted.  
10:15:32 7 Imperial's refinery typically runs at less than full  
10:15:36 8 capacity, on average basis somewhere around 75 percent  
10:15:40 9 capacity, but sometimes, Your Honor, as low as 60 to  
10:15:45 10 65 percent.

10:15:45 11 Secondly, Your Honor, we will show regulations  
10:15:47 12 in the sugar industry are designed to ensure that all  
10:15:51 13 domestically sourced sugar is sold each year, but Imperial  
10:15:55 14 is different. It's reliance on high cost imported raw sugar  
10:16:00 15 first forces it to serve as a residual supplier that  
10:16:04 16 typically cannot sell successfully against lower cost  
10:16:07 17 suppliers, except during narrow windows of time, like the  
10:16:11 18 end of the annual selling cycle where domestic producers  
10:16:14 19 have already sold much of their sugar for the year and are  
10:16:19 20 low on stock and customers then turn to Imperial. That's  
10:16:22 21 not to say that Imperial doesn't make sales during the rest  
10:16:24 22 of the year, it does, and it makes some sales throughout the  
10:16:30 23 year either as a backup supplier to customers, indeed often  
10:16:34 24 it's the third or fourth backup supplier, to fill in for  
10:16:38 25 other suppliers that could experience unexpected

10:16:40 1 disruptions, or when imported raw sugar prices are  
10:16:45 2 uncharacteristically low. It also makes sales to customers  
10:16:49 3 that are not served in any significant way by other  
10:16:55 4 suppliers such as United. And one example of that, Your  
10:16:57 5 Honor, is the food service segment. But the key is this,  
10:17:00 6 when it makes those types of sales, Imperial is serving a  
10:17:05 7 different role in the market, often not competing directly  
10:17:09 8 with United or any other lower cost suppliers or providing  
10:17:13 9 any kind of significant competitive constraint on them.

10:17:17 10 Turning to point three, then, Your Honor,  
10:17:21 11 Mr. Buterman spoke at some length about the numerous  
10:17:24 12 problems with the DOJ's proposed geographic market. All I  
10:17:28 13 would add is that the evidence will show in the case that  
10:17:31 14 neither of the DOJ's proposed markets, what they referred to  
10:17:34 15 as the narrow market or the broader market is consistent  
10:17:37 16 with the commercial realities of Imperial's business.

10:17:41 17 THE COURT: Is it the defendants' position that  
10:17:43 18 the commercial realities are what, nationwide?

10:17:48 19 MR. CAMERON: In essence, yes. Imperial  
10:17:52 20 competes or tries to sell its product around the country.  
10:17:55 21 Mr. Gorrell will testify that for Imperial it sells the vast  
10:17:58 22 majority of its sugar really from Texas up to Chicago and  
10:18:02 23 east of that, but they also do sell west. And even more  
10:18:05 24 than that, they compete with suppliers all over the country  
10:18:08 25 to sell sugar. So yes, the market is absolutely much, much

10:18:13 1 broader than anything that's been contended by the DOJ in  
10:18:18 2 this case. Indeed, Imperial consistent with that, Your  
10:18:21 3 Honor, Imperial doesn't have sales regions at all, let alone  
10:18:25 4 ones that correspond to the markets proposed by the DOJ.  
10:18:29 5 Imperial, as I mentioned, sells its product far more broadly  
10:18:33 6 than the alleged markets proposed by the DOJ. And key  
10:18:37 7 points, Your Honor, some of Imperial's top selling states  
10:18:40 8 like Texas rank third for Imperial in sales by volume in  
10:18:45 9 2021, third, are inexplicably excluded from both of the  
10:18:51 10 markets proposed by the government.

10:18:53 11 The other point, Your Honor, is that distant  
10:18:56 12 competitors, located well outside what the DOJ described as  
10:19:00 13 their broader market frequently compete with Imperial inside  
10:19:05 14 that market, undercut Imperial on price and win customer  
10:19:09 15 business from Imperial and that happens all the time. And  
10:19:13 16 they're able to do that because even though Imperial may  
10:19:16 17 have some advantage on freight costs in that area, its raw  
10:19:21 18 sugar costs are typically so much higher than its  
10:19:24 19 competitors that it still can't come close to competing with  
10:19:28 20 them on price.

10:19:32 21 And Your Honor, this hard reality from Imperial  
10:19:35 22 is best illustrated by the following example, beet  
10:19:38 23 manufacturers that Mr. Buterman referred to who are located  
10:19:42 24 in the midwest and northwest of the country can often grow,  
10:19:45 25 process, refine, and ship their refined sugar from the

10:19:51 1 midwest and northwest into Georgia and indeed, Your Honor,  
10:19:55 2 into Savannah where Imperial's refinery is located, more  
10:20:00 3 cheaply than Imperial can acquire the imported raw sugar  
10:20:04 4 that it needs to actually run its refinery. So it's a  
10:20:09 5 dramatic difference.

10:20:10 6 Finally, Your Honor, none of these challenges  
10:20:13 7 that are faced by Imperial are changing any time soon.  
10:20:17 8 Consequently, absent this transaction, Imperial will remain  
10:20:22 9 competitively handicapped to the high price of imported raw  
10:20:27 10 sugar. Without any guarantee of supply, it will continue to  
10:20:32 11 suffer from aging facilities being run at around 75 percent  
10:20:38 12 of the capacity and often significantly lower than that,  
10:20:41 13 with capital expenditures being made only to maintain  
10:20:44 14 operations and to preserve safety and health. And, Your  
10:20:47 15 Honor, as Mr. Gorrell, Imperial's CEO will testify, he is  
10:20:52 16 extremely concerned about what lies ahead for this business  
10:20:55 17 absent this transaction.

10:20:57 18 Thank you, Your Honor.

10:20:58 19 THE COURT: All right. Thank you. Who is your  
10:21:02 20 first witness?

10:21:02 21 MS. SINKLER: Good morning, Your Honor. Chinita  
10:21:12 22 Sinkler for the United States of America. And we call our  
10:21:12 23 first witness is Mr. Aaron Riippa who is the business  
10:21:42 24 sourcing manager at General Mills.

10:21:42 25 THE COURT: Make sure you get the direct and the

Riippa - direct

10:21:49 1 cross binders, and the witness should come up with them. I  
10:21:53 2 see one.

10:21:54 3 MS. SINKLER: I gave him the direct already.

10:21:56 4 THE COURT: But we want him to have the direct  
10:21:58 5 and cross when he goes up.

10:22:00 6 MS. SINKLER: It's up there already, Your Honor.  
10:22:03 7 On the stand.

10:22:04 8 THE COURT: Okay. Thank you.

10:22:06 9 MS. SINKLER: You're welcome.

10:22:09 10 COURT CLERK: Please raise your right hand.

10:22:12 11 Please state and spell your full name for the record.

10:22:14 12 THE WITNESS: Aaron Michael Riippa. Want me to  
10:22:18 13 spell the whole thing? A-A-R-O-N, M-I-C-H-A-E-L,  
10:22:23 14 R-I-I-P-P-A.

10:22:24 15 AARON MICHAEL RIIPPA, having been duly sworn,  
10:22:31 16 was examined and testified as follows:

10:22:37 17 MS. SINKLER: May I proceed, Your Honor?

10:22:43 18 THE COURT: Please.

10:22:44 19 MS. SINKLER: Thank you.

10:22:45 20 DIRECT EXAMINATION

10:22:45 21 BY MS. SINKLER:

10:22:46 22 Q. Good morning, Mr. Riippa.

10:22:47 23 A. Good morning.

10:22:48 24 Q. You have two binders of exhibits up there. You can  
10:22:52 25 just leave them there right now. Once we get to the

Riippa - direct

10:22:53 1 documents, I'll let you know. Okay?

10:22:55 2 A. Okay.

10:22:55 3 Q. Would you please state your full name for the record  
10:22:58 4 and spell your last name?

10:22:59 5 A. Aaron Michael Riippa. R-I-I-P-P-A.

10:23:05 6 Q. Where do you work?

10:23:06 7 A. General Mills.

10:23:07 8 Q. Where is General Mills headquartered?

10:23:09 9 A. Minneapolis, Minnesota.

10:23:11 10 Q. What type of business is General Mills?

10:23:13 11 A. A food manufacturing company.

10:23:15 12 Q. What are some of the brands that General Mills makes?

10:23:17 13 A. Things like cereal, so Cheerios, Cinnamon Toast  
10:23:25 14 Crunch, Nature Valley and different snack products, Betty  
10:23:30 15 Crocker cake mix, canned refrigerated dough, such as  
10:23:34 16 Pillsbury crescent rolls, sweet rolls, soup, and a whole  
10:23:38 17 host of other products as well.

10:23:40 18 Q. How many manufacturing plants does General Mills have  
10:23:42 19 in the United States?

10:23:44 20 A. We have over fifteen plants and then dozens of  
10:23:46 21 external company manufacturer locations that we contract  
10:23:50 22 with.

10:23:52 23 Q. Are your manufacturing plants located all around the  
10:23:54 24 country?

10:23:56 25 A. They are, yes.

Riippa - direct

10:23:57 1 Q. Let's talk a little bit about your job history. How  
10:24:00 2 long have you worked at General Mills?  
10:24:02 3 A. It will be eleven years this May.  
10:24:05 4 Q. What is your current role at the company?  
10:24:08 5 A. My current role is the sourcing business leader in  
10:24:13 6 our meals and baking operating system.  
10:24:14 7 Q. What do you do as sourcing business leader?  
10:24:17 8 A. I am integrated within the operating unit which  
10:24:22 9 houses our business team which is the marketing team that  
10:24:24 10 owns the PNL of our brand. I am the liaison between the  
10:24:31 11 broader sourcing organization and those brand marketing  
10:24:34 12 teams and those supply teams and I manage those structures.  
10:24:39 13 Q. Could you explain how your current job relates to the  
10:24:42 14 purchase of sugar for General Mills?  
10:24:44 15 A. Yes. So being the liaison between the sourcing  
10:24:51 16 organization, I'm aware of all of the inputs that would go  
10:24:53 17 into those, the different ingredients, the market exposures,  
10:24:57 18 the price volatiles related to that, translating those  
10:25:00 19 messages back to the marketing teams as part of that, the  
10:25:03 20 sugar being a very significant input for the product  
10:25:07 21 portfolio that I support.  
10:25:08 22 Q. How long have you been in your current position?  
10:25:10 23 A. It will be one year this summer.  
10:25:14 24 Q. What was your job before that?  
10:25:16 25 A. I was the senior sourcing manager, leading our sweet



Riippa - direct

10:25:21 1 commodities portfolio.

10:25:23 2 Q. What did you do as the senior sourcing manager?

10:25:26 3 A. I would manage a team of buyers that had all things  
10:25:31 4 sweet commodities which would include individually managing  
10:25:34 5 our sugar portfolio, but also had things such as cocoa,  
10:25:38 6 chocolate, honey, non-fructose sweeteners and marshmallow as  
10:25:44 7 well, and was responsible for all aspects of the broader  
10:25:49 8 category management including price, price market,  
10:25:57 9 understanding, contracting decisions, supplier relationship  
10:26:02 10 management, productivity and cost savings initiatives just  
10:26:05 11 to name a few.

10:26:06 12 Q. What did you do in regards to the sugar portfolio?

10:26:09 13 A. I managed all the day-to-day responsibilities and the  
10:26:12 14 vendor relationship management, contracting aspects of the  
10:26:18 15 sugar.

10:26:19 16 Q. Does that involve negotiating with suppliers?

10:26:21 17 A. Yes, it did.

10:26:23 18 Q. During that time were you doing anything to stay  
10:26:28 19 abreast of the sugar market?

10:26:29 20 A. Yes.

10:26:30 21 Q. What were you doing?

10:26:32 22 A. We would review different market intelligence  
10:26:38 23 reports, we would meet often with different suppliers and  
10:26:42 24 producers in the industry and analyst groups, and it was  
10:26:50 25 just kind of a -- part of the day-to-day responsibility to

Riippa - direct

10:26:54 1 staying abreast of the changing market conditions relating  
10:26:57 2 to sugar.

10:26:58 3 Q. How long were you in that position?

10:27:00 4 A. About two years.

10:27:02 5 Q. How long in total have you been a part of the  
10:27:07 6 sourcing team at General Mills?

10:27:08 7 A. My entire time with General Mills.

10:27:10 8 Q. Let's talk a little bit more specifically about the  
10:27:13 9 sugar that General Mills buys. Does General Mills buy and  
10:27:18 10 use refined sugar to make its products?

10:27:19 11 A. Yes, we do.

10:27:20 12 Q. What is refined sugar?

10:27:21 13 A. Refined sugar would be derived from either a beet or  
10:27:28 14 cane origin source and then molasses and other content  
10:27:34 15 extracted from it, leaving a fine granulated white crystal  
10:27:39 16 sugar.

10:27:39 17 Q. What type of refined sugar is General Mills buying?

10:27:43 18 A. We have -- we buy a few different things, but the  
10:27:50 19 majority of our spend is in with one specification that  
10:27:54 20 designated either beet or cane sugar as what's known as DSU  
10:28:00 21 or extra fine granulated.

10:28:03 22 Q. Does General Mills also buy liquid sugar?

10:28:06 23 A. We do, yes.

10:28:08 24 Q. How does extra fine granulated that you referred to  
10:28:13 25 relate to the sugar that most of us make, have at our

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10:28:17 1 kitchen table?

10:28:17 2 A. To my understanding it would be the equivalent of  
10:28:20 3 what you would see in sugar that you would buy from the  
10:28:24 4 grocery store or at a restaurant.

10:28:28 5 Q. Are you familiar with the term high fructose corn  
10:28:33 6 syrup or HFCS?

10:28:35 7 A. Yes, I am.

10:28:35 8 Q. What is that?

10:28:37 9 A. That's a sweetener derived from corn.

10:28:39 10 Q. I want to talk a little bit about the company's sugar  
10:28:41 11 purchases. Approximately how many of General Mills' U.S.  
10:28:47 12 manufacturing plants use refined sugar?

10:28:50 13 A. I believe just about all of them.

10:28:53 14 Q. And are you familiar with some of the companies that  
10:28:58 15 make refined sugar from cane in the United States?

10:29:01 16 A. Yes, I am.

10:29:02 17 Q. Would you name them, please?

10:29:04 18 A. Imperial Sugar, US Sugar Corporation, Domino Sugar or  
10:29:10 19 ASR, and Louisiana Sugar Refineries.

10:29:15 20 Q. Where are those companies's refineries located?

10:29:19 21 A. LSR and Domino would be in the New Orleans area. US  
10:29:25 22 Sugar is in Florida and Imperial in Savannah, Georgia.

10:29:29 23 Q. Does General Mills buy sugar from Imperial?

10:29:32 24 A. Yes, we do.

10:29:35 25 Q. Does General Mills buy sugar from United?

Riippa - direct

10:29:36 1 A. Yes, we do.

10:29:37 2 Q. When General Mills is buying sugar from United, do  
10:29:41 3 you ever deal with anyone at US Sugar?

10:29:44 4 A. Not directly.

10:29:45 5 Q. Who does General Mills deal with at United when  
10:29:48 6 you're buying sugar?

10:29:50 7 A. We would work through our main account team which  
10:29:55 8 would be our direct account representative, Tim Minton, the  
10:29:59 9 leadership team at United, Dirk Swart, and then occasionally  
10:30:07 10 Steve Hanson for market updates and information regarding.

10:30:13 11 Q. Are you familiar with some of the companies that make  
10:30:15 12 refined sugar from beets in the United States?

10:30:18 13 A. Yes, I am.

10:30:18 14 Q. Who are they?

10:30:20 15 A. Michigan Sugar, United Sugar, National Sugar  
10:30:27 16 Marketing, and Western Sugar.

10:30:29 17 Q. Where are those company's refineries located.

10:30:33 18 A. Michigan Sugar is in the state of Michigan. NSM or  
10:30:41 19 National Sugar Marketing is in both Minnesota and greater  
10:30:45 20 plains region, so Idaho, United Sugar in the Red River  
10:30:52 21 Valley area which would be North Dakota and Minnesota and  
10:30:58 22 Western Sugar which would be the Colorado/Nebraska/Montana  
10:31:03 23 area.

10:31:04 24 Q. Are you aware of sugar distributors of refined sugar?

10:31:08 25 A. Yes I am.

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10:31:09 1 Q. What is a sugar distributor?

10:31:10 2 A. A sugar distributor depending on their size and scope  
10:31:13 3 of how many sweeteners they manage would be a reseller of  
10:31:18 4 sugar products.

10:31:19 5 Q. Would you tell us approximately how much sugar  
10:31:23 6 General Mills buys each year in the United States?

10:31:27 7 A. About 700 million pounds of granulated sugar, about  
10:31:31 8 100 million pounds of liquid sugar. And about 20 million  
10:31:36 9 pounds of specialty sugar.

10:31:37 10 Q. And generally, would you tell us what General Mills'  
10:31:41 11 yearly spend on sugar is in the United States?

10:31:45 12 A. Probably around \$200 million, plus or minus depending  
10:31:49 13 on the year.

10:31:50 14 Q. Now, I have just a few questions about how General  
10:31:54 15 Mills buys its sugar. Does General Mills use any contracts  
10:31:58 16 to buy sugar?

10:31:59 17 A. Yes, we do.

10:32:00 18 Q. What time frame do these contracts tend to cover?

10:32:04 19 A. They tend to cover a calendar year basically.

10:32:07 20 Q. Could you describe for us the type of contracts that  
10:32:10 21 General Mills uses?

10:32:11 22 A. In terms of bidding or when we secure?

10:32:18 23 Q. Do you use any type of volume contracts?

10:32:20 24 A. Yes. We do volume contracts.

10:32:25 25 Q. What is that?

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10:32:25 1 A. That means we agree to a certain volume and price or  
10:32:31 2 set of prices depending on the plant that it's delivered  
10:32:35 3 rate for the period of time in question.

10:32:37 4 Q. Is there a time of year when General Mills does its  
10:32:42 5 annual contracting for sugar?

10:32:43 6 A. We tend to start our contracting activities in the  
10:32:47 7 springtime.

10:32:49 8 Q. Why is that?

10:32:50 9 A. There is an industry event called the International  
10:32:54 10 Sweeteners Colloquium which is viewed as the formal kickoff  
10:32:59 11 to contracting season with industry participants and  
10:33:04 12 industry users.

10:33:07 13 Q. And why does the contracting tend to happen around  
10:33:11 14 that time frame?

10:33:13 15 A. I don't know the specific origin of it, but it is a  
10:33:18 16 convenient event nonetheless when there are all your  
10:33:23 17 suppliers and customers are together in which you can have  
10:33:28 18 individual meetings, talk about price expectations, growing  
10:33:33 19 expectations, and ultimately the kind of first draft of what  
10:33:37 20 they believe their pricing will be for the next calendar  
10:33:40 21 year.

10:33:41 22 Q. Are you familiar with the term sold position?

10:33:44 23 A. I am, yes.

10:33:45 24 Q. Why does that context matter?

10:33:49 25 A. A sold position for our use at General Mills would

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10:33:55 1 reference how much a vendor has sold of their book  
10:34:00 2 business, and we would interpret that as being the more sold  
10:34:05 3 someone is, the potential for less lower prices, they're  
10:34:11 4 less competitive, and a lower sold position might equal more  
10:34:17 5 opportunity from a buying side.

10:34:18 6 Q. How does it affect General Mills, if at all, if your  
10:34:25 7 sugar suppliers were sharing the sold information with one  
10:34:29 8 another?

10:34:29 9 A. That would have a negative impact to our buying.

10:34:31 10 Q. Why?

10:34:31 11 A. As referenced, our belief if they knew what other  
10:34:41 12 people were potentially going to offer, how much they would  
10:34:45 13 offer or how aggressive someone else would be, could  
10:34:48 14 potentially dictate what type pricing they would submit to  
10:34:53 15 us.

10:34:54 16 Q. Does General Mills use a request for proposal or an  
10:34:59 17 RFP process to buy its sugar?

10:35:01 18 A. Yes, we do.

10:35:03 19 Q. Would you describe the RFP process at just a high  
10:35:07 20 level for us?

10:35:08 21 A. Yep. So at -- following the event we will do an RFP,  
10:35:15 22 request proposal, different pricing structures, different  
10:35:19 23 mechanisms can be within that but fundamentally it's  
10:35:23 24 facilitated by a third-party sourcing organization for us  
10:35:26 25 called GEP and it invites vendors to participate and provide

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10:35:31 1 their price and then we use that as the framework of our  
10:35:36 2 negotiation process moving forward.

10:35:37 3 Q. And specifically what specifications are included in  
10:35:40 4 General Mills' RFP?

10:35:42 5 A. Generally, the main one is our main bulk sugar.

10:35:51 6 Q. How is the sugar that is purchased under the RFP  
10:35:55 7 delivered to General Mills' plants?

10:35:58 8 A. The main volume is done either via bulk truck or bulk  
10:36:03 9 rail.

10:36:04 10 Q. Why do some plants receive delivery of sugar via  
10:36:11 11 truck and other receive via rail?

10:36:13 12 A. Typically our larger using plants that have a lot of  
10:36:17 13 sugar have been able to historically afford the capital  
10:36:21 14 required to bring in bulk ingredients and/or they have  
10:36:25 15 access to a rail line that would facilitate that transaction  
10:36:31 16 smoothly. And then others just potentially don't use enough  
10:36:35 17 sugar or enough bulk ingredients to justify the capital.

10:36:40 18 Q. Does the RFP that General Mills uses, include all the  
10:36:44 19 facilities around the United States?

10:36:47 20 A. For the most part, yes.

10:36:50 21 Q. In general, do the same suppliers bid for every  
10:36:54 22 facility?

10:36:54 23 A. No, they do not.

10:36:55 24 Q. Why not?

10:36:57 25 A. We will open up the bid to anyone that can feed all



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10:37:06 1 the plants and some choose to only bid on certain ones,  
10:37:10 2 either based on historical deliveries there or a geographic  
10:37:16 3 proximity to their location.

10:37:18 4 Q. What do you mean by a geographic proximity?

10:37:22 5 A. The closer our facility is to their production  
10:37:28 6 location, might be a plant that they would be interested in  
10:37:33 7 providing a price on.

10:37:34 8 Q. And to your understanding, why does that matter?

10:37:38 9 A. From a freight perspective, sugar is contracted and  
10:37:43 10 measured off of a delivered price, and so the freight  
10:37:48 11 component, although not the biggest part, but still can be  
10:37:52 12 significant, is -- would allow them to remain competitive in  
10:37:59 13 a given area.

10:38:01 14 Q. What factors determine whether a vendor will be  
10:38:04 15 awarded a contract to supply particular manufacturing plants  
10:38:09 16 for General Mills?

10:38:09 17 A. Predominantly will be, price driven and then  
10:38:13 18 secondarily would be service driven.

10:38:16 19 Q. What do you mean by price?

10:38:18 20 A. Price would be that delivered price I referenced  
10:38:22 21 which is the FOB plus freight would be the delivery price.

10:38:22 22 Q. What do you mean by service?

10:38:23 23 A. Service is the on time arrival of either a truck or a  
10:38:32 24 railcar to our plants when our purchase orders had asked for  
10:38:35 25 that sugar to be there, so the ability to consistently do

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10:38:44 1 that is important consideration.

10:38:47 2 Q. Anything else?

10:38:49 3 A. You those would be the two primary factors.

10:38:53 4 Different payment terms which would be different extended

10:38:57 5 payment terms in which General Mills would pay for our

10:39:01 6 invoices, it could be a third consideration as well.

10:39:06 7 Q. In general, are there any criteria that are important

10:39:10 8 when evaluating who will supply General Mills with sugar

10:39:16 9 year after year?

10:39:17 10 A. Price would be the biggest factor in that.

10:39:21 11 Q. Any other factors?

10:39:23 12 A. Service, reliability and consistency in previous

10:39:28 13 performance could certainly influence that. But we have

10:39:35 14 known relationships with all the sugar producers in the

10:39:38 15 country, and so we also feel confident in people's ability

10:39:43 16 to service our plants as well, so price is the majority

10:39:47 17 decision criteria.

10:39:49 18 Q. Do you consider quality at all?

10:39:52 19 A. We do, yes.

10:39:54 20 Q. How so?

10:39:56 21 A. We would want to make sure that our -- the sugar

10:40:00 22 coming in would be free of foreign material and perform as

10:40:04 23 well in our operating systems to make our finished products.

10:40:07 24 So if there was a vendor that had a series of known issues

10:40:12 25 and considerations, either poor material or sugar that did

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10:40:15 1 not perform or was not free flowing it would be part of our  
10:40:19 2 consideration for that.

10:40:21 3 Q. Is there any type of qualification process that  
10:40:24 4 General Mills uses for new sugar supplier?

10:40:27 5 A. Yes.

10:40:28 6 Q. Would you describe that process?

10:40:30 7 A. If we were to onboard a new sugar vendor, it would be  
10:40:35 8 very similar to how we would onboard any ingredient vendor  
10:40:39 9 and it would really start with a visit to their producing  
10:40:42 10 facility to understand if it's made in a food safe way, good  
10:40:47 11 manufacturing practices. And then we would receive samples  
10:40:50 12 of that product and run them in different finished product  
10:40:53 13 that it would be used in to make sure that it did not drive  
10:40:57 14 any changes to our consumer.

10:40:59 15 Q. How important is it that the refined sugar that  
10:41:03 16 General Mills buys meets safety standards?

10:41:05 17 A. Very important.

10:41:06 18 Q. How so?

10:41:07 19 A. Well making sure there is no foreign material or not  
10:41:15 20 appropriate objects to be found in food is very important  
10:41:19 21 for our company, and the trust we built with consumers over  
10:41:24 22 the years.

10:41:24 23 Q. Does General Mills take any steps to ensure that the  
10:41:28 24 sugar it's buying meets their safety standards?

10:41:32 25 A. We do.

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10:41:32 1 Q. What steps do you take?

10:41:33 2 A. Most of our plants would have -- we would visit our  
10:41:37 3 vendor locations and make sure that they are operating in  
10:41:40 4 that safe manufacturing, and most of our plants we will then  
10:41:45 5 have metal detection, magnets, other preventative streams  
10:41:52 6 that would help stop any of those things entering into our  
10:41:57 7 operations.

10:41:57 8 Q. Anything else?

10:42:00 9 A. No.

10:42:03 10 Q. Does General Mills make spot purchases of sugar?

10:42:06 11 A. We do occasionally, yes.

10:42:08 12 Q. What is spot purchasing?

10:42:09 13 A. Spot purchasing would be needing to go and secure an  
10:42:12 14 incremental or defined set of volume at a given plant or a  
10:42:18 15 very specific time, generated by not -- having exceeded your  
10:42:25 16 contract coverage or the vendor that is contracted for a  
10:42:31 17 given plant not being able to service that facility.

10:42:35 18 Q. How does one go about making spot purchases?

10:42:39 19 A. Typically when you need to make a spot purchase it is  
10:42:44 20 in an urgent and short notice environment so it tends to be  
10:42:49 21 e-mailing or calling other vendors, mostly sugar  
10:42:53 22 distributors to see if they can service a plant at a given  
10:42:59 23 time at a given quantity.

10:43:05 24 Q. I want to ask you a few questions about the USDA  
10:43:09 25 sugar program. Are you familiar with the USDA sugar

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10:43:11 1

program?

10:43:12 2

A. Yes, I am.

10:43:13 3

Q. Why are you familiar with that program?

10:43:16 4

A. In -- when on boarding and managing the sugar desk it

10:43:23 5

is a critical part of the on boarding process. It

10:43:27 6

fundamentally governs how sugar operates in this country so

10:43:32 7

you become very well versed in that program. And then I

10:43:36 8

joined the desk a couple of months before a force majeure

10:43:42 9

event and so learned very quickly how the sugar program

10:43:46 10

worked as a result of that.

10:43:47 11

Q. And from your perspective as a customer, what is the

10:43:50 12

USDA's role?

10:43:53 13

A. From my understanding, their role informed by the

10:43:56 14

injury perspective is they will help solve for supply of

10:44:00 15

sugar to ensure there is an adequate supply of sugar in our

10:44:03 16

country.

10:44:06 17

Q. Have you ever communicated with the USDA about

10:44:10 18

Mexican sugar imports?

10:44:13 19

A. Yes, we have.

10:44:16 20

Q. When was that?

10:44:19 21

A. I believe that was last March or April of 2021.

10:44:22 22

Q. And can you tell us what happened?

10:44:25 23

A. We had two conversations with the USDA in

10:44:28 24

understanding what their recommendations would be to

10:44:31 25

increase the amount of supply of refined sugar into this

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10:44:39 1 country, to provide a price alleviation for what we were  
10:44:43 2 seeing being transacted on the market related to sugar. And  
10:44:50 3 coming out of that, they did not take any direct action from  
10:44:55 4 our conversation with them, but I do believe that in the  
10:44:58 5 months and weeks that followed they did increase some sugar  
10:45:03 6 from Mexico.

10:45:05 7 Q. And did General Mills see any impact on the prices it  
10:45:10 8 was paying for sugar in the USDA action?

10:45:14 9 A. No.

10:45:15 10 Q. You mentioned force majeure. What was that?

10:45:19 11 A. There was two bad sugar harvests, one in the Red  
10:45:28 12 River Valley represented by United Sugar and then one was  
10:45:31 13 Western Sugar that they were unable to harvest a significant  
10:45:34 14 amount of their sugar beets and thus both of those vendors  
10:45:40 15 claimed force majeure, which was a reduction in our  
10:45:44 16 contracted quantities.

10:45:45 17 Q. What did that mean for General Mills?

10:45:46 18 A. That means that we were ones, before that we had all  
10:45:51 19 of our sugar met before the next calendar year, so we had to  
10:45:57 20 go and find new sugar to replace the quantities that were  
10:46:02 21 reduced by.

10:46:02 22 Q. Let's talk a little bit more about the facilities.  
10:46:07 23 You testified earlier that General Mills has facilities all  
10:46:11 24 around the United States. How many plants does it have in  
10:46:14 25 Covington, Georgia?

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10:46:15 1 A. We have two plants in Covington, Georgia.

10:46:19 2 Q. What kind of products are made in Covington, Georgia?

10:46:23 3 A. Cereal, most obvious thing is like Cinnamon Toast

10:46:27 4 Crunch and snacks like Nature Valley.

10:46:31 5 Q. How is refined sugar delivered to the Covington

10:46:35 6 plant.

10:46:35 7 A. In bulk truck.

10:46:37 8 Q. Is any delivered via rail?

10:46:39 9 A. No.

10:46:41 10 Q. Why not?

10:46:42 11 A. We have not been able to do the -- to have the

10:46:45 12 capital investment work out which would meet our internal

10:46:51 13 guidance to support that, and then we have not -- we have

10:46:54 14 also not recommended it for sugar to be via bulk as well.

10:47:02 15 Q. Why is that?

10:47:03 16 A. Based on feedback from the vendors including United

10:47:07 17 about the change in humidity and temperature from Florida

10:47:13 18 and Georgia potentially causing clumping or performance

10:47:17 19 issues when it arrived at our plant.

10:47:19 20 Q. Could you explain a little bit more what you mean?

10:47:22 21 A. So, we have had some instances in the past and our

10:47:27 22 belief or assumption is that in very humid climates when

10:47:32 23 sugar is loaded into a railcar which has over 200,000

10:47:37 24 pounds, that moisture as it moves north, moves into less

10:47:42 25 humid conditions and kind of rumbling of the rail and the

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10:47:45 1 transit time it takes, can lead to significant clumping or  
10:47:48 2 issues where sugar sticks to the walls of the railcar and  
10:47:52 3 cannot be dislodged and cannot be used.

10:47:55 4 Q. Have you heard of any such issues using trucks?

10:47:59 5 A. No.

10:48:00 6 Q. Now, I would like you, Mr. Riippa, to take a look at  
10:48:05 7 a document in your binder. Could you turn to JTX 008.

10:48:10 8 MS. SINKLER: I'm going to ask the Court at this  
10:48:12 9 time not to display it on the public screen because it has  
10:48:14 10 competitively sensitive information.

10:48:16 11 And the binder is PDF version of this, Your  
10:48:21 12 Honor, and the native Excel actually may have some hidden  
10:48:26 13 screens that have not been opened. Plaintiff and defendants  
10:48:31 14 agreed to make sure all the screens are opened in your  
10:48:36 15 system.

10:48:38 16 THE COURT: Was someone going to put it on my  
10:48:43 17 screen? I thought someone could do that.

10:48:48 18 MS. SINKLER: Not the public screen. Are you  
10:48:53 19 able to see it, Your Honor?

10:48:58 20 THE COURT: In theory. I can't see a number on  
10:49:03 21 there.

10:49:08 22 MS. SINKLER: It was a native cover.

10:49:13 23 THE COURT: I can see it. I can't read it. The  
10:49:18 24 font is so small, I can't read them.

10:49:23 25 MS. SINKLER: I'm sorry. I can give you a hard



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10:49:14 1 copy.

10:49:14 2 THE COURT: I can pull it up. What exhibit is  
10:49:16 3 it?

10:49:18 4 MS. SINKLER: JTX 008.

10:49:23 5 THE COURT: Okay. Thank you. You just have to  
10:49:28 6 tell me what tab.

10:49:34 7 MS. SINKLER: What tab?

10:49:35 8 THE COURT: It's an Excel document. There are  
10:49:38 9 tabs at the bottom and the picture that is on my screen here  
10:49:42 10 has red and green things on it, and the first page of it  
10:49:45 11 does not, so I don't know what I have, consolidated response  
10:49:50 12 payment terms, S & G actuals, Michigan revised.

10:49:55 13 MS. SINKLER: Right, I think some of the tabs  
10:49:57 14 are hidden on the Excel, so you have to unhide them. You  
10:50:03 15 have to select columns E and AP on the tab at the top and  
10:50:10 16 right click to unhide the tab.

10:50:12 17 THE COURT: I have no idea what that means. You  
10:50:27 18 have to tell me again what to do.

10:50:30 19 MS. SINKLER: I think what you do is you click  
10:50:32 20 on the tabs at the top, and you see E and AP, column  
10:50:37 21 headings and you highlight those. And then right click  
10:50:41 22 unhide. And it should open up.

10:51:03 23 THE COURT: Do you have stuff highlighted on  
10:51:05 24 here in different colors than what's on my sheet?

10:51:08 25 MS. SINKLER: No, they are in different colors.

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10:51:13 1 THE WITNESS: I think if you scroll.

10:51:25 2 THE COURT: If you guys could give us this stuff  
10:51:27 3 in the right format, it would help because you're just  
10:51:31 4 wasting your time in trying to figure this out. Or you can  
10:51:35 5 do it this way if you want.

10:51:43 6 Okay. I got it. Thank you.

10:51:46 7 MS. SINKLER: Thank you.

10:51:47 8 BY MS. SINKLER:

10:51:50 9 Q. Do you recognize JTX 008?

10:51:53 10 A. Yes, I do.

10:51:53 11 Q. What is it?

10:51:55 12 A. This is our following the bid event, this is the -- a  
10:52:03 13 consolidation half of the pricing, vendor locations, and  
10:52:10 14 then a color coding to designate the competitiveness or the  
10:52:16 15 lowest price compared to the highest price.

10:52:19 16 Q. Did you prepare JTX 008 in the ordinary course of  
10:52:23 17 your duties at General Mills?

10:52:24 18 A. Yes, I did.

10:52:25 19 Q. Does General Mills routinely prepare such reports to  
10:52:28 20 reflect bids?

10:52:29 21 A. Yes, we do.

10:52:31 22 MS. SINKLER: Your Honor, I would like to offer  
10:52:33 23 JTX 008 into evidence. And it's been designated as a  
10:52:36 24 confidential document.

10:52:38 25 THE COURT: Any objection?

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10:52:40 1 MR. YATES: No objection, Your Honor.

10:52:41 2 THE COURT: All right. It's so admitted.

10:52:43 3 (JTX Exhibit No. 008 was admitted into  
10:52:43 4 evidence.)

10:52:43 5 BY MS. SINKLER:

10:52:49 6 Q. Mr. Riippa, I'm going to ask you a few questions  
10:52:52 7 about the document. First of all, do you see the  
10:52:54 8 consolidated response tab at the bottom. Would you describe  
10:52:58 9 generally what the consolidated response tab is doing?

10:53:01 10 A. This is showing all the different responses we've  
10:53:04 11 received, the starting in column C down would be all of our  
10:53:14 12 plant locations. Column D would have the method in which  
10:53:21 13 sugar would be delivered. Column E would have two price  
10:53:25 14 represented in millions of pounds, and then through the rest  
10:53:29 15 of the sheet would be the vendors broken down by their FOB  
10:53:35 16 price delivered and then delivered price offering.

10:53:40 17 Q. Thank you.

10:53:40 18 And if you look at line 5 starting at E, page  
10:53:51 19 22, volume in pounds, do you see that?

10:53:57 20 A. Yes.

10:53:57 21 Q. Right next to it, it says FOB dollar sign/CWT, right  
10:54:04 22 under F5.

10:54:06 23 A. Yes.

10:54:06 24 Q. What is CWT referring to?

10:54:09 25 A. That is referring to a hundredweight price. And so

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10:54:16 1 if -- so you would move the decimal point over two spots to  
10:54:21 2 the left to get a per pound price.

10:54:23 3 Q. Could you give us an example?

10:54:25 4 A. If something was \$50 a hundredweight, you would move  
10:54:29 5 it twice and therefore it would be \$0.50 a pound.

10:54:34 6 Q. Thank you.

10:54:35 7 Are all the reported prices on JTX 008 on a  
10:54:39 8 hundredweight basis?

10:54:40 9 A. Yes, they are.

10:54:44 10 Q. First, let's focus on Covington, Georgia on lines 13  
10:54:49 11 and 14 of JTX 008. Do you see that?

10:54:53 12 A. Yes.

10:54:54 13 Q. Will you just tell us the cells that reflect the  
10:54:59 14 vendors who bid to supply Covington, Georgia?

10:55:02 15 A. It would be in sales F through H1. And then U  
10:55:15 16 through Z1. And AJ through AL1.

10:55:30 17 Q. According to JTX 008, what sales showed who had the  
10:55:37 18 lowest delivered price bid of the three companies listed in  
10:55:41 19 the previous cell?

10:55:45 20 A. That would be the cell Z 13 and 14.

10:55:52 21 Q. And which cell JTX 008 shows the facility from where  
10:56:01 22 the winning bidder would be supplying sugar from?

10:56:04 23 A. That would be X through Z3.

10:56:10 24 THE COURT: I don't know what any of this means,  
10:56:12 25 X through Z3. I thought I was following along and now I'm

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10:56:17 1 just -- X through Z3. I see X through Z, I don't know what  
10:56:24 2 3 means.

10:56:27 3 MS. SINKLER: So the number to the left on the  
10:56:31 4 Excel, on JTX 008, the 3, and then --

10:56:38 5 THE COURT: I have no idea what you're talking  
10:56:40 6 about. I have X, Y and Z, and I see for lines 13 and 14,  
10:56:49 7 Covington, Georgia, there are numbers. But I'm missing the  
10:56:53 8 3. I just don't know what you're talking about.

10:57:05 9 MS. SINKLER: If you go back to which cell shows  
10:57:10 10 the facility, the winning bidder, would be the final sugar  
10:57:23 11 comp.

10:57:23 12 THE COURT: I have no idea what you're talking  
10:57:24 13 about.

10:57:26 14 MS. SINKLER: Do you see the X, Y, Z at the top?

10:57:29 15 THE COURT: Yes, I have the X, Y, Z. I don't  
10:57:32 16 see the 3.

10:57:34 17 MS. SINKLER: The 3 is on the left, the far  
10:57:36 18 left, if you go all the way across to the right under X, Y,  
10:57:40 19 Z, that's what he's referring to as the 3.

10:57:42 20 THE COURT: So its the name of the city and  
10:57:42 21 state, that's X, Y, Z, you can't tell me that on the record.

10:57:51 22 MS. SINKLER: That would identify for him  
10:57:54 23 specifically who the supplier was that bid.

10:57:52 24 THE COURT: Truly, is that highly competitive  
10:57:52 25 information? I need someone to help me out here because

Riippa - direct

10:58:05 1 this is -- we are making this trial impossible to figure out  
10:58:08 2 on the record with this code that is going to make it very  
10:58:14 3 difficult for us in post-trial briefing. So who -- I don't  
10:58:19 4 understand.

10:58:20 5 MS. SINKLER: I think what the company --

10:58:22 6 THE COURT: We're talking about -- some of these  
10:58:25 7 parties here are parties in this case.

10:58:27 8 MS. SINKLER: Right.

10:58:27 9 THE COURT: And we can't say whether or not -- I  
10:58:30 10 mean, what? You can't even say the states?

10:58:41 11 MS. SINKLER: We can, just going back to the  
10:58:44 12 prices, the specific prices, because we don't want to do the  
10:58:49 13 specific prices on the public record.

10:58:51 14 THE COURT: Okay.

10:58:51 15 MS. SINKLER: Is that all right?

10:58:55 16 BY MS. SINKLER:

10:58:56 17 Q. According to JTX 008, which cells show who has the  
10:59:01 18 next lowest prices to supply Covington?

10:59:05 19 A. H13 and 14.

10:59:10 20 Q. Finally, which cells show who have the highest bid to  
10:59:22 21 supply Covington?

10:59:23 22 A. AL 13 and 14.

10:59:26 23 MS. SINKLER: At this time Your Honor --

10:59:28 24 THE COURT: Let me figure it out. I now  
10:59:32 25 understand it. But I am not understanding who it is because

Riippa - direct

10:59:35 1 he's clearly been prepared to spit these names out and I  
10:59:39 2 need to find them.

10:59:41 3 MS. SINKLER: All right.

10:59:42 4 THE COURT: Okay. When you guys do post-trial  
10:59:48 5 briefing, if you don't specify who these people are, it's  
10:59:52 6 going to be very difficult for you to win. We're just going  
10:59:56 7 to sit here and say AB4, anyway, go ahead.

11:00:04 8 MS. SINKLER: At this time I would request to  
11:00:06 9 close the courtroom for the rest of the witness's testimony.  
11:00:09 10 We'll be eliciting confidential information.

11:00:13 11 THE COURT: Anyone who is not in protective  
11:00:16 12 order, we are going to be eliciting third-party highly  
11:00:20 13 confidential information. There is a record that's been  
11:00:23 14 made in the submissions that this is highly competitive and  
11:00:31 15 would be prejudice to the parties. And we're going to shut  
11:00:37 16 off the streaming, too.

11:01:01 17 (Courtroom sealed.)

11:01:15 18

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11:01:42 24

11:01:48 25

Riippa - direct

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Riippa - direct

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Riippa - direct

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Riippa - direct

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Riippa - direct

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Riippa - direct

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use.

Riippa - direct

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11:11:30 10

MS. SINKLER: I have no further questions at this time, Your Honor.

11:11:32 11

11:11:32 12

THE COURT: All right. So let's do the cross just on anything you have on this, and then -- you don't have.

11:11:34 13

11:11:41 14

11:11:44 15

MR. YATES: I don't think we need to do anything on the confidential sealed record.

11:11:49 16

11:11:51 17

THE COURT: Okay. We'll open the sealed record but let's take our morning break.

11:11:53 18

11:11:55 19

COURT CLERK: All rise.

11:28:52 20

(A brief recess was taken.)

11:28:52 21

THE COURT: All right. Please be seated.

11:29:01 22

Cross-exam.

11:29:02 23

MR. YATES: Good morning, Your Honor. Chris Yates of Latham & Watkins for US Sugar. May I proceed?

11:29:04 24

11:29:05 25

THE COURT: Yes, please.

Riippa - cross

11:29:09 1

**CROSS-EXAMINATION**

11:29:09 2

**BY MR. YATES:**

11:29:10 3

Q. Thank you. Nice to seen you again, Mr. Riippa.

11:29:12 4

Mr. Riippa, let's start where Ms. Sinkler ended

11:29:16 5

and spend a lot of time with the Covington, Georgia plants.

11:29:20 6

Is that all right?

11:29:21 7

A. Yes.

11:29:21 8

Q. For 2022, those two plants were being supplied by

11:29:25 9

United, correct?

11:29:26 10

A. Correct.

11:29:27 11

Q. For 2022, United and General Mills entered into

11:29:31 12

what's called a blanket volume agreement which covers nine

11:29:35 13

different plants from New York to Iowa to Tennessee to

11:29:39 14

Georgia, correct?

11:29:39 15

A. Correct.

11:29:39 16

Q. And as part of that blanket volume agreement, General

11:29:44 17

Mills allowed United to`raise the price for the supplies for

11:29:48 18

the Covington, Georgia plants in exchange for a price

11:29:51 19

reduction in other parts of the country. Isn't that true?

11:29:52 20

A. That is correct.

11:29:52 21

Q. And Imperial didn't bid on any of the other plants

11:30:02 22

that are covered by the blanket volume contract with United,

11:30:02 23

did it?

11:30:02 24

A. Correct.

11:30:02 25

Q. Okay. Including Centerville, Tennessee?

Riippa - cross

11:30:12 1 A. Correct.

11:30:13 2 Q. Murfreesburo, Tennessee?

11:30:16 3 A. Correct.

11:30:16 4 Q. As part of its blanket volume agreement with United,  
11:30:20 5 General Mills ultimately agreed to a price for the  
11:30:25 6 Covington, Georgia plants there's higher than the price that  
11:30:29 7 the DOJ showed you, right?

11:30:32 8 A. Can you say it again?

11:30:34 9 Q. Sure.

11:30:35 10 Do you recall Ms. Sinkler went through the  
11:30:39 11 spreadsheet and she isolated the price that United bid, do  
11:30:45 12 you recall that?

11:30:45 13 A. Yes.

11:30:45 14 Q. Do you recall that what ended up happening was  
11:30:48 15 General Mills and United said United, you can charge a  
11:30:51 16 higher price to Covington, Georgia and a price even higher  
11:30:54 17 than the Imperial price?

11:30:55 18 A. I cannot recall the specifics.

11:30:57 19 Q. Okay. But what did happen was General Mills wanted a  
11:31:00 20 price reduction in other parts of the country from United,  
11:31:02 21 correct?

11:31:02 22 A. Correct.

11:31:07 23 Q. And General Mills agreed to a higher price for  
11:31:10 24 Covington, Georgia in exchange for a lower price in other  
11:31:14 25 parts of the country; right?



Riippa - cross

11:31:15 1 A. Correct.

11:31:17 2 Q. Okay. And that's because General Mills cares about  
11:31:19 3 its overall spend, the overall price it's paying for refined  
11:31:24 4 sugar throughout the United States; correct?

11:31:26 5 A. Correct.

11:31:30 6 Q. Let's talk briefly about another General Mills  
11:31:32 7 facility in Georgia, that's a company packing facility in  
11:31:37 8 Rome, Georgia?

11:31:38 9 A. Yes.

11:31:38 10 Q. For 2022, Cargill, LSR Cargill is contracted to  
11:31:45 11 supply that facility, correct?

11:31:47 12 A. I believe so.

11:31:47 13 Q. And Cargill is the sole supplier of that facility in  
11:31:52 14 Rome, Georgia, correct?

11:31:53 15 A. Yes.

11:31:53 16 Q. For calendar year 2022, General Mills didn't contract  
11:31:57 17 with Imperial to supply that facility, did it?

11:32:00 18 A. Correct.

11:32:00 19 Q. That's even though Imperial is located in the state  
11:32:03 20 of Georgia, right?

11:32:04 21 A. To my knowledge, yes.

11:32:05 22 Q. And I think you said that General Mills has fifteen  
11:32:08 23 plants and dozens of co-packing locations, correct?

11:32:13 24 A. Correct.

11:32:13 25 Q. The only plants in the United States that Imperial

Riippa - cross

11:32:16 1 bid on were the two plants in Covington, Georgia and the one  
11:32:21 2 plant in Rome, Georgia in 2022, correct?

11:32:23 3 A. I would have to look and see.

11:32:25 4 Q. Well, we could look at JTX 008, and we'll do that  
11:32:30 5 after in the post-trial briefing?

11:32:32 6 A. Okay.

11:32:33 7 Q. To the best of your recollection, Imperial did not  
11:32:35 8 bid on any of General Mills' plants in Tennessee; is that  
11:32:40 9 right?

11:32:40 10 A. Correct.

11:32:41 11 Q. And didn't bid on any General Mills' facility or  
11:32:45 12 co-packing facility in Kentucky or any other state; correct?

11:32:49 13 A. Correct.

11:32:50 14 Q. I think, let me just confirm, when General Mills  
11:32:53 15 wants to purchase refined sugar, it typically issues  
11:32:57 16 requests for proposal to suppliers, correct?

11:33:01 17 A. Correct.

11:33:01 18 Q. And does General Mills use the fact that it's a large  
11:33:04 19 purchaser of refined sugar to retain favorable pricing  
11:33:10 20 terms?

11:33:10 21 A. Yes, we do.

11:33:12 22 Q. I think what you told me in deposition was that  
11:33:16 23 General Mills uses its economy of scale to obtain the best  
11:33:21 24 prices possible, right?

11:33:22 25 A. I believe so.

Riippa - cross

11:33:22 1 Q. Let's talk a bit further about these blanket volume  
11:33:27 2 contracts that General Mills entered into with certain sugar  
11:33:31 3 suppliers. Is it true with a blanket volume contract  
11:33:35 4 General Mills retains the flexibility to shift sugar  
11:33:39 5 deliveries between its various plants?

11:33:41 6 A. Yes.

11:33:41 7 Q. And with this blanket volume contract, General Mills  
11:33:46 8 can shift the supply of refined sugar from among its various  
11:33:52 9 plants, correct?

11:33:53 10 A. Yes.

11:33:53 11 Q. And let's use United as an example. There is a  
11:33:59 12 blanket volume contract with United and General Mills,  
11:34:02 13 correct?

11:34:02 14 A. Correct.

11:34:03 15 Q. With a blanket volume contract, General Mills has the  
11:34:07 16 ability to tell United that it wants to shift the delivery  
11:34:10 17 of a certain number of thousands of pounds or tens of  
11:34:13 18 thousands of pounds of sugar from let's say Murfreesburo,  
11:34:17 19 Tennessee to Cedar Rapids, Iowa, correct?

11:34:20 20 A. Correct.

11:34:20 21 Q. And the converse is true, isn't it, General Mills has  
11:34:23 22 the ability to tell United please send the sugar that was  
11:34:27 23 going to go to Cedar Rapids, Iowa to Murfreesburo, Tennessee  
11:34:32 24 instead?

11:34:32 25 A. With enough notice there is flexibility to do that,

Riippa - cross

11:34:35 1       **yes.**

11:34:36 2       **Q.       The reason General Mills does that is because General**  
11:34:39 3       **Mills wants the flexibility to shift the supply of sugar to**  
11:34:42 4       **its various plants around the country, correct?**

11:34:44 5       **A.       That is correct.**

11:34:50 6       **Q.       I mentioned Murfreesburo, Tennessee. General Mills**  
11:34:53 7       **has two plants in Murfreesburo Tennessee correct?**

11:34:57 8       **A.       Yes.**

11:34:58 9       **Q.       And one of those plants makes Pillsbury products,**  
11:35:02 10       **right.**

11:35:02 11       **A.       Yes.**

11:35:02 12       **Q.       And the other one makes Yoplait Yogurt?**

11:35:06 13       **A.       Yes.**

11:35:07 14       **Q.       And General Mills purchases a very large amount of**  
11:35:10 15       **sugar for those two plants in Murfreesburo?**

11:35:13 16       **A.       I believe that is correct.**

11:35:15 17       **Q.       About 200 million pounds?**

11:35:18 18       **A.       I believe so, yes.**

11:35:19 19       **Q.       Out of the 750 million pounds that it buys yearly?**

11:35:22 20       **A.       Some of that would be the liquid sugar which is not**  
11:35:22 21       **in the 750 million.**

11:35:22 22       **Q.       Fair to say that Murfreesburo is one of General**  
11:35:32 23       **Mills' larger sugar using locations in the United States?**

11:35:32 24       **A.       That is correct.**

11:35:32 25       **Q.       And in 2022 General Mills contacted with United in**

Riippa - cross

11:35:43 1 Cargill to deliver the bulk sugar, correct?

11:35:47 2 A. Yes.

11:35:47 3 Q. And United was supplied the Murfreesburo, Tennessee  
11:35:51 4 plant with beet sugar, is that right?

11:35:52 5 A. On occasion, yes.

11:35:55 6 Q. And that comes down to Tennessee to Murfreesburo,  
11:35:57 7 Tennessee from the Red River Valley, right?

11:36:01 8 A. Yes.

11:36:01 9 Q. Comes all the way down from the boarder of North  
11:36:05 10 Dakota and Minnesota, correct?

11:36:06 11 A. Correct.

11:36:07 12 Q. And the sugar that General Mills purchases from LSR  
11:36:12 13 and Cargill, that comes up to Tennessee from Louisiana, is  
11:36:17 14 that correct?

11:36:17 15 A. That is correct.

11:36:17 16 Q. You mentioned liquid sugar. General Mills buys  
11:36:21 17 liquid sugar for its Murfreesburo, Tennessee plant from a  
11:36:25 18 company we haven't discussed in this trial yet called CSC,  
11:36:30 19 correct?

11:36:30 20 A. That is correct.

11:36:32 21 Q. Is CSC the sole supplier of liquid sugar to the  
11:36:32 22 Murfreesburo, Tennessee plants?

11:36:32 23 A. Yes, they are.

11:36:32 24 Q. And CSC supplies a significant quantity of liquid  
11:36:42 25 sugar to those plants?

Riippa - cross

11:36:45 1 A. That is correct.

11:36:45 2 Q. Much of the hundred million pounds of liquid sugar  
11:36:48 3 that General Mills buys on an annual basis?

11:36:52 4 A. Correct.

11:36:52 5 Q. And you testified, I believe on direct that about  
11:36:56 6 something called the International Sweeteners Colloquium.

11:37:00 7 Do you recall that?

11:37:01 8 A. Yes, I do.

11:37:02 9 Q. You helped prepare presentations in advance of those  
11:37:07 10 meetings, is that correct?

11:37:07 11 A. That is correct.

11:37:08 12 Q. Let's take a look at JTX 007 which I will ask the  
11:37:12 13 court not to display on the public screen since General  
11:37:17 14 Mills has marked it as confidential. Let me know when you  
11:37:21 15 have that, sir.

11:37:22 16 A. What was the -- I have the --

11:37:25 17 Q. JTX-007. Do you have that?

11:37:28 18 A. Yes.

11:37:28 19 Q. Would you turn to the slide that ends in the Bates  
11:37:31 20 number 407, it's entitled CSC Sugar.

11:37:42 21 A. Yes.

11:37:43 22 Q. And JTX-007, this is the document you prepared in the  
11:37:48 23 ordinary course of your job duties at General Mills, is that  
11:37:52 24 correct?

11:37:52 25 A. That is correct.

Riippa - cross

11:37:53 1 Q. And to prepare for meetings with suppliers and others  
11:37:56 2 at the International Sweeteners Colloquium in 2020, correct?  
11:38:00 3 A. That is correct.  
11:38:01 4 Q. And you meet with analysts, industry analysts at the  
11:38:06 5 colloquium?  
11:38:07 6 A. Yes.  
11:38:07 7 Q. And you meet with sugar suppliers?  
11:38:09 8 A. Yep.  
11:38:09 9 Q. You said earlier I think on direct that it's the  
11:38:13 10 beginning of the contracting season for the next year, is  
11:38:16 11 that correct?  
11:38:16 12 A. That is correct.  
11:38:17 13 Q. Take a look at the slide for the meeting with CSC  
11:38:21 14 Sugar. Do you have that, sir?  
11:38:23 15 A. Yes.  
11:38:23 16 Q. Under the heading background, do you see it says CSC  
11:38:27 17 has built a business around raw sugar trade and as a  
11:38:32 18 disrupter in the finished product phase for sugar?  
11:38:35 19 A. Yes.  
11:38:36 20 Q. Is it fair to say that General Mills perceived CSC to  
11:38:42 21 be a disrupter in the sugar space in the United States?  
11:38:42 22 A. Yes, we do.  
11:38:42 23 Q. Is that because CSC has built new liquid facilities  
11:38:50 24 that have disrupted supply and demand dynamics in the sugar  
11:38:52 25 industry?

Riippa - cross

11:38:55 1 A. That is one factor, yes.

11:38:56 2 Q. What are the others?

11:38:58 3 A. Their ability to take the raw sugar and make higher  
11:39:01 4 color sugar which would drive cost savings projects for  
11:39:06 5 General Mills, and that would be the other factor.

11:39:11 6 Q. In fact, under background, it talks about some of the  
11:39:14 7 substantial cost savings to General Mills from working with  
11:39:18 8 a company like CSC?

11:39:21 9 A. That is correct.

11:39:21 10 Q. And under supplier interests in General Mills, do you  
11:39:27 11 see that, sir?

11:39:28 12 A. Yes.

11:39:29 13 Q. Do you see it says open new liquid sugar lanes, even  
11:39:35 14 willing to adopt and build manufacturing sites close to GMI,  
11:39:41 15 General Mills, do you see that?

11:39:41 16 A. Yes.

11:39:42 17 Q. Does that mean that CSC Sugar has expressed a  
11:39:47 18 willingness to build new manufacturing facilities close to  
11:39:51 19 General Mills plants?

11:39:52 20 A. Yes, they have.

11:39:54 21 Q. If you turn to slide 404, sir. This is a slide to  
11:40:00 22 prepare for a meeting with Batory Foods?

11:40:02 23 A. Yes.

11:40:07 24 Q. In your direct, Batory Foods was referred to as a  
11:40:12 25 distributor, correct?



Riippa - cross

- 11:40:14 1 A. Yes.
- 11:40:14 2 Q. But Batory Foods takes refined sugar and produces
- 11:40:19 3 powdered sugar for General Mills, does it not?
- 11:40:21 4 A. That's correct, yes.
- 11:40:22 5 Q. And General Mills has purchased powdered sugar from
- 11:40:25 6 Batory Foods; correct?
- 11:40:27 7 A. Yes.
- 11:40:27 8 Q. And it also says under Batory Foods, Batory Foods is
- 11:40:33 9 a big sugar buyer in NAR, North American Region, 500 million
- 11:40:40 10 pounds. Do you see that?
- 11:40:41 11 A. Yes.
- 11:40:41 12 Q. Is that the quantity of sugar that Batory is buying
- 11:40:46 13 on an annual basis?
- 11:40:47 14 A. That was shared with us, so I'm not sure you have the
- 11:40:49 15 scope of that, but I believe so.
- 11:40:51 16 Q. Is Batory an example of a distributor who General
- 11:40:57 17 Mills turns to when it needs to make spot purchases?
- 11:40:59 18 A. They are one of our distributors, yes.
- 11:41:03 19 Q. Let's take a look at slide, the slide that's
- 11:41:07 20 immediately prior to this one, that's on Bates number 403.
- 11:41:14 21 Is this slide one that's being prepared for a meeting with
- 11:41:17 22 Imperial?
- 11:41:17 23 A. Yes, it is.
- 11:41:19 24 Q. And do you see under supplier interests in General
- 11:41:25 25 Mills that there are two sub-bullets?

Riippa - cross

11:41:27 1 A. Yes.

11:41:28 2 Q. And the second one is they don't really need us?

11:41:33 3 A. Yes.

11:41:33 4 Q. And you told me in your deposition that General  
11:41:37 5 Mills' view is Imperial doesn't price its refined sugar to  
11:41:42 6 win General Mills' business?

11:41:43 7 A. That is correct.

11:41:44 8 Q. In fact, Imperial's pricing to General Mills is  
11:41:47 9 particularly higher than the pricing of other General Mills  
11:41:51 10 suppliers, isn't that true?

11:41:53 11 A. Yes.

11:41:54 12 Q. Now, Mr. Riippa, you also attended the colloquium in  
11:42:00 13 the spring of 2021, correct?

11:42:02 14 A. I do not believe there was a colloquium in 2021.

11:42:07 15 Q. You prepared slides in advance of a virtual  
11:42:11 16 colloquium in 2021, right?

11:42:14 17 A. Yes.

11:42:14 18 Q. Please take a look at what's been marked as JTX 009,  
11:42:19 19 sir, in your binder. Is this a presentation that you helped  
11:42:30 20 prepare in the ordinary course of your job duties at General  
11:42:32 21 Mills?

11:42:32 22 A. Yes, it is.

11:42:34 23 Q. And at this time, General Mills had already entered  
11:42:38 24 into its contracts for calendar year 2021 and it was  
11:42:42 25 beginning the contracting process for calendar year 2022,

Riippa - cross

11:42:46 1

correct?

11:42:47 2

A. That is correct.

11:42:47 3

Q. Let's turn to the second slide in the deck, the one

11:42:50 4

that's titled NAR Sugar Book Summary Calendar 2021. Do you

11:42:56 5

see that?

11:42:57 6

A. Yes.

11:42:57 7

Q. And this slide shows General Mills refined sugar

11:43:03 8

purchases from certain suppliers for calendar years 2017

11:43:08 9

through 2021; correct?

11:43:09 10

A. Correct.

11:43:11 11

Q. And General Mills' largest suppliers of refined sugar

11:43:15 12

by volume for those years were Michigan Sugar, NSM and

11:43:20 13

United, correct?

11:43:21 14

A. That is correct.

11:43:21 15

Q. And General Mills also purchased refined sugar from

11:43:26 16

Cargill, Western, Domino, Imperial, and CSC between 2017 and

11:43:31 17

2021; is that correct?

11:43:31 18

A. That is correct.

11:43:34 19

Q. And General Mills also bought refined sugar such as

11:43:38 20

powder sugar from Batory and Indiana during that time

11:43:42 21

period?

11:43:42 22

A. Yes.

11:43:42 23

Q. Were there other suppliers of refined sugar to

11:43:47 24

General Mills during that time period, sir?

11:43:50 25

A. Yes. McGill via Batory, related to the force majeure

Riippa - cross

11:44:02 1 purchases we needed to make.

11:44:04 2 Q. And General Mills' sugar purchases for calendar year  
11:44:08 3 2021 are reflected in this slide by the light purple bar;  
11:44:13 4 correct?

11:44:13 5 A. That is correct.

11:44:14 6 Q. And is it true that in calendar year 2021, General  
11:44:18 7 Mills purchased more refined sugar from each of NSM, United,  
11:44:23 8 Michigan, Cargill, Western, and CSC than it did from  
11:44:29 9 Imperial?

11:44:30 10 A. It appears that it did, yes.

11:44:31 11 Q. Of all the suppliers listed on this slide from whom  
11:44:36 12 General Mills purchased refined sugar in 2021, Imperial was  
11:44:40 13 the smallest; correct?

11:44:43 14 A. I believe so. Domino would be the smallest. I don't  
11:44:49 15 believe they have a bar.

11:44:50 16 Q. Domino, you didn't buy any sugar from Domino in 2021,  
11:44:54 17 correct?

11:44:54 18 A. I don't believe so.

11:44:55 19 Q. But of the ones that you were purchased refined sugar  
11:44:59 20 from, Imperial was the smallest?

11:45:00 21 A. Yes.

11:45:01 22 Q. Do you see the text at the top of page 2 of JTX 009,  
11:45:06 23 sir, that indicates the total quantity of refined sugar  
11:45:10 24 General Mills purchased in calendar year 2021?

11:45:13 25 A. Yes.

Riippa - cross

11:45:13 1 Q. That's 750 million pounds?

11:45:17 2 A. Correct.

11:45:17 3 Q. General Mills bought a very small fraction of its  
11:45:21 4 overall sugar purchases, about one percent from Imperial in  
11:45:24 5 calendar year 2021, correct?

11:45:27 6 A. I believe so.

11:45:27 7 THE COURT: Is this document, I mean, is this  
11:45:29 8 one that we're only doing on the small screen and not on the  
11:45:32 9 big one?

11:45:34 10 MR. YATES: Yes, Your Honor. General Mills has  
11:45:37 11 asked that it be kept confidential.

11:45:39 12 THE COURT: That's okay. For the reasons set  
11:45:41 13 forth in their submissions, I granted that, I just want to  
11:45:45 14 make sure.

11:45:46 15 MR. YATES: I appreciate it. I think we can do  
11:45:49 16 it all on the public record.

11:45:51 17 THE COURT: This one, okay.

11:45:53 18 BY MR. YATES:

11:45:54 19 Q. Do you see on the right-hand portion of this same  
11:45:57 20 slide it says 90 percent of GMI book is beet sugar?

11:46:00 21 A. Yes.

11:46:02 22 Q. That means that in 2021, 90 percent of General Mills  
11:46:12 23 sugar purchases were beet?

11:46:13 24 A. Correct.

11:46:14 25 Q. Imperial is a cane only supplier?

Riippa - cross

11:46:17 1 A. Yep correct.

11:46:18 2 Q. The percentage of refined sugar that was beet sugar  
11:46:21 3 that General Mills made that increased from eight percent in  
11:46:27 4 2020 to 9 percent in 2021, correct?

11:46:29 5 A. I do not recall the specifics of that number.

11:46:31 6 Q. By 2021 there was 90 percent, correct?

11:46:34 7 A. Correct.

11:46:35 8 Q. In 2021 according to the same slide, cane suppliers  
11:46:40 9 lost share at General Mills due to cost, correct?

11:46:43 10 A. That is correct.

11:46:44 11 Q. Domino is a cane only supplier, correct?

11:46:47 12 A. Correct.

11:46:47 13 Q. And General Mills made no purchases in 2021 from  
11:46:51 14 Domino, correct?

11:46:52 15 A. I believe so, correct.

11:46:53 16 Q. And between 2020 and 2021, United lost volume to  
11:46:59 17 General Mills, isn't that true?

11:47:02 18 A. Yes.

11:47:04 19 Q. And that was because of United inability to meet  
11:47:08 20 General Mills' price targets, correct?

11:47:12 21 A. I cannot recall the specifics.

11:47:13 22 Q. Well, let's take a look at DTX-098.

11:47:30 23 For the record DTX-098, is that an e-mail from  
11:47:32 24 your boss at the time, Christophe Laurent to a variety of  
11:47:40 25 individuals at General Mills attaching a PowerPoint slide?

Riippa - cross

11:47:42 1 A. Christophe is a peer sourcing manager to me, yes, our  
11:47:47 2 sourcing leadership.

11:47:48 3 Q. Fair enough.

11:47:49 4 If you go to the second page of this document,  
11:47:51 5 sir. This page is seeking approval of General Mills sugar  
11:47:59 6 purchase contracts for calendar year 2021; correct?

11:48:03 7 A. That is correct.

11:48:04 8 Q. And you see that it says under C 21 allocation?

11:48:10 9 A. Yes.

11:48:10 10 Q. United's volume decreases and it's got a number based  
11:48:14 11 on inability to reach target price submitted by General  
11:48:19 12 Mills?

11:48:19 13 A. That is correct.

11:48:19 14 Q. So General Mills set a target price and if United  
11:48:23 15 didn't meet it, their volume was going to go down, correct?

11:48:26 16 A. I believe so.

11:48:27 17 Q. In fact, if you go up in this document, sir, do you  
11:48:30 18 see it talks about General Mills forcing pressure on all  
11:48:34 19 suppliers who are expecting an earlier cover from General  
11:48:38 20 Mills, do you see that, top of the page, sir, under context,  
11:48:42 21 last paragraph, last sentence in the paragraph.

11:48:48 22 A. Yes. Yep.

11:48:52 23 Q. Now, let's talk for a moment again about Imperial.  
11:48:57 24 For calendar year 2022, General Mills didn't contract with  
11:49:02 25 Imperial to supply any bulk sugar, correct, if Imperial was

Riippa - redirect

11:49:09 1 supplying less than one percent of General Mills' refined  
11:49:12 2 sugar in 2021, correct?

11:49:13 3 A. I believe so.

11:49:15 4 Q. And Imperial supplied no bulk refined sugar to  
11:49:19 5 General Mills in 2022; correct?

11:49:24 6 A. That is correct.

11:49:27 7 MR. YATES: Your Honor, I would like to move  
11:49:28 8 into evidence JTX-008, 009 and DTX-098.

11:49:33 9 THE COURT: Any objection? There might be a  
11:49:37 10 correction.

11:49:38 11 MR. YATES: 007, my apologies.

11:49:40 12 THE COURT: Any objection?

11:49:41 13 MS. SINKLER: No.

11:49:41 14 THE COURT: All right. Thank you.

11:49:43 15 (The above exhibit were admitted into evidence.)

11:49:44 16 MR. YATES: No further questions, Your Honor.

11:49:45 17 Thank you.

11:49:46 18 THE COURT: Thank you.

11:49:47 19 Redirect.

11:49:47 20 MS. SINKLER: Yes, Your Honor.

11:49:52 21 REDIRECT EXAMINATION

11:49:53 22 BY MS. SINKLER:

11:50:02 23 Q. On cross Mr. Yates asked you about CSC. Can General  
11:50:08 24 Mills use CSC to supply Covington, Georgia?

11:50:12 25 A. We cannot.



Riippa - redirect

11:50:12 1 Q. Why not?

11:50:13 2 A. They are a liquid sugar supplier, not a bulk dry  
11:50:17 3 granulated sugar supplier, and they do not have assets to  
11:50:21 4 meet our needs in Covington.

11:50:24 5 Q. You were also asked about Murfreesboro Tennessee.  
11:50:28 6 When United is supplying sugar to Murfreesboro Tennessee and  
11:50:34 7 bidding to supply Murfreesboro do they bid to supply from  
11:50:38 8 Florida or the Red River Valley?

11:50:40 9 A. Most assumptions would be based out of Florida and  
11:50:43 10 then some conversation about either some quantity or  
11:50:48 11 contingency plan from the Red River Valley if needed.

11:50:51 12 Q. Is General Mills paying United based on a Florida  
11:50:55 13 quoted price or a Red River Valley quoted price?

11:50:58 14 A. Most are Florida.

11:51:02 15 Q. You were also asked about Rome, Georgia. How many  
11:51:07 16 suppliers in total bid to supply Rome, Georgia for 2022?

11:51:12 17 A. I cannot recall specifically.

11:51:17 18 Q. You were also asked about Batory Foods. Do you know  
11:51:21 19 where Batory Foods obtains the refined sugar that it uses to  
11:51:25 20 make the powdered sugar for General Mills?

11:51:28 21 A. From United.

11:51:32 22 Q. I want to refer you back to JTX-007. And it's the  
11:51:40 23 page that has Bates 403 ending in 403. Do you see that?

11:52:00 24 A. Yes.

11:52:05 25 Q. Do you see under background it's well situated to

Riippa - redirect

11:52:14 1      **serve the Covington plant as well as smaller southeastern**  
11:52:19 2      **end points?**

11:52:19 3      **A.            Yes.**

11:52:20 4      **Q.            What does that mean?**

11:52:21 5      **A.            That means that I believe geographically they're**  
11:52:24 6      **about, from the Savannah refinery to the Covington plant is**  
11:52:28 7      **about an hour or so drive, and then also Rome, Georgia**  
11:52:32 8      **facility is also not far away, so that was our comment, is**  
11:52:36 9      **that they're very close geographically to our plants.**

11:52:40 10                **MS. SINKLER: Thank you, Mr. Riippa. I don't**  
11:52:42 11      **have any further questions.**

11:52:43 12                **THE COURT: Thank you very much, sir. You are**  
11:52:45 13      **excused.**

11:52:46 14                **What's next?**

11:52:47 15                **MR. HANNA: Your Honor, Brian Hanna for the**  
11:52:49 16      **United States. At this time United States called Dirk Swart**  
11:52:51 17      **to the stand. Dirk Swart is the executive vice-president of**  
11:52:57 18      **sales for United Sugars.**

11:53:02 19                **THE COURT: Great. Thank you.**

11:53:54 20                **COURT CLERK: Please raise your right hand.**  
11:54:02 21      **Please state and spell your full name for the record.**

11:54:06 22                **THE WITNESS: Dirk Francis Swart, D-I-R-K,**  
11:54:10 23      **F-R-A-N-C-I-S, S-W-A-R-T.**

11:54:17 24                **DIRK FRANCIS SWART, having been duly sworn was**  
11:54:18 25      **examined and testified as follows:**

Swart - direct

11:54:40 1 MR. HANNA: May I proceed, Your Honor?

11:54:41 2 THE COURT: Yes, please.

11:54:41 3 DIRECT EXAMINATION

11:54:41 4 BY MR. HANNA:

11:54:42 5 Q. Good morning Mr. Swart.

11:54:43 6 A. Good morning.

11:54:44 7 Q. Nice to see you again. We handed you a binder on  
11:54:48 8 your way up. You may refer to that during your testimony  
11:54:50 9 today. I'll let you know when you need it.

11:54:51 10 A. Okay.

11:54:54 11 Q. Mr. Swart, you're the executive vice-president of  
11:54:58 12 sales at United Sugar; right?

11:55:00 13 A. Yes.

11:55:00 14 Q. And you have been in that position since 2015  
11:55:04 15 Murfreeboro correct?

11:55:05 16 A. That's correct.

11:55:06 17 Q. And you have been working at United Sugars since it  
11:55:09 18 was created back in 1994; correct?

11:55:11 19 A. That's correct.

11:55:12 20 Q. And you, sir, oversee the sale and pricing for  
11:55:15 21 industrial customers for United, right?

11:55:16 22 A. Yes.

11:55:17 23 Q. Now, an industrial customer is a food processor or a  
11:55:20 24 distributors of retail?

11:55:21 25 A. Right.

Swart - direct

- 11:55:26 1 Q. General Mills, for example, would be an example of a  
11:55:29 2 industrial food processor, correct?
- 11:55:31 3 A. Correct.
- 11:55:32 4 Q. Batory Foods would be an example of a distributor or  
11:55:36 5 resale customer, right?
- 11:55:37 6 A. Right.
- 11:55:38 7 Q. Now, United is a marketing cooperator that is owned  
11:55:43 8 by four companies that produce sugar, right?
- 11:55:45 9 A. That's correct.
- 11:55:45 10 Q. And United's four owners are American Crystal Sugar,  
11:55:51 11 Minn-Dak Farmers Cooperative, Wyoming Sugar and US Sugar?
- 11:55:51 12 A. That is right.
- 11:55:51 13 Q. US Sugar has the refinery in Clewiston, Florida?
- 11:56:00 14 A. Yes, sir.
- 11:56:01 15 Q. And other owners of United are three sugar producers,  
11:56:05 16 right, three beet sugar producers, right?
- 11:56:08 17 A. That's correct.
- 11:56:08 18 Q. The beet sugar production plants are located in  
11:56:11 19 Minnesota, North Dakota, Montana and Wyoming, right?
- 11:56:12 20 A. Yes.
- 11:56:12 21 Q. And the area in Minnesota and North Dakota, Montana  
11:56:20 22 are referred to as Red River Valley at times?
- 11:56:24 23 A. That's correct.
- 11:56:24 24 Q. And United is the exclusive seller of the sugar  
11:56:25 25 produced by those four sugar producers, right?

Swart - direct

11:56:30 1 A. That's correct.

11:56:31 2 Q. Now, I want to talk about the type of refined sugar  
11:56:33 3 that United sells. United sells granulated sugar, right?

11:56:37 4 A. Correct.

11:56:38 5 Q. And granulated sugar is the white crystalized sugar  
11:56:42 6 that we're all familiar with, right?

11:56:44 7 A. That's right.

11:56:45 8 Q. United Sugar sells powdered sugar, brown sugar and  
11:56:49 9 liquid sugar, right?

11:56:50 10 A. That's correct.

11:56:51 11 Q. United sells granulated sugar in bulk form via truck  
11:56:55 12 or railcar, right?

11:56:57 13 A. That's correct.

11:56:58 14 Q. And United Sugar also sells sugar in various size  
11:57:02 15 packaging, right?

11:57:03 16 A. That's correct.

11:57:04 17 Q. United sells sugar in 25-pound bags and 50-pound bags  
11:57:08 18 correct?

11:57:10 19 A. That's correct.

11:57:12 20 Q. United also sells super sacks to customers, right?

11:57:13 21 A. Yes.

11:57:14 22 Q. Super sacks are 2,000-pound bags?

11:57:18 23 A. That is correct.

11:57:19 24 Q. United also sells retail size bags, right?

11:57:22 25 A. They do, yes.

Swart - direct

11:57:24 1 Q. Now, some of United customers specified that they  
11:57:28 2 require cane sugar only, right?

11:57:30 3 A. That's correct, yes.

11:57:32 4 Q. And for customers that specify cane only sugar, they  
11:57:36 5 can't take beet sugar for that product, right?

11:57:38 6 A. No, that's correct.

11:57:40 7 Q. And for industrial customers, about 13 to 15 percent  
11:57:45 8 of United's sales volume are for customers that specify cane  
11:57:50 9 sugar only, right?

11:57:51 10 A. Yeah, that's about right.

11:57:53 11 Q. Now, let's talk about the process of United selling  
11:57:56 12 sugar to customers. United has sole discretion over pricing  
11:58:00 13 of the sugar produced by the members owners; right?

11:58:03 14 A. That's correct.

11:58:04 15 Q. And you, sir, have full pricing authority to set the  
11:58:07 16 prices for industrial customers; right?

11:58:09 17 A. Correct.

11:58:10 18 Q. Now, the financial return that gets paid back to  
11:58:13 19 United owners is what's called the net selling price; is  
11:58:17 20 that right?

11:58:19 21 A. Yes, sir.

11:58:21 22 Q. And the net selling price is sometimes abbreviated as  
11:58:24 23 NSP, correct?

11:58:26 24 A. Correct.

11:58:28 25 Q. Now, the net selling price is generally the net

Swart - direct

11:58:26 1 revenue from the customer minus the cost to make that sale,  
11:58:29 2 right?

11:58:30 3 A. That's correct.

11:58:31 4 Q. And net revenue is the delivered price to have the  
11:58:35 5 customer pay?

11:58:36 6 A. That's correct.

11:58:37 7 Q. The delivered price is the price you have sugar  
11:58:40 8 delivered to a particular customer's location; right?

11:58:42 9 A. That's correct.

11:58:43 10 Q. The transportation cost is a component of the  
11:58:47 11 delivered price, right?

11:58:48 12 A. Right.

11:58:49 13 Q. United paid each owner the net selling price  
11:58:53 14 multiplied by the volume of sugar that that owner  
11:58:56 15 contributed to the pool for that year; right?

11:58:59 16 A. That's correct.

11:59:00 17 Q. So each owner of United benefits financially from  
11:59:05 18 each sale of sugar regardless if that owner produced the  
11:59:10 19 sugar; is that right?

11:59:11 20 A. That's correct.

11:59:12 21 Q. For example, US Sugar does not have the capability of  
11:59:15 22 produce powdered sugar, right?

11:59:17 23 A. That's right.

11:59:18 24 Q. But one of United owners, American crystal does  
11:59:21 25 produced powdered sugar, right?

Swart - direct

11:59:23 1 A. That's right.

11:59:24 2 Q. So US Sugar benefits financially from United sale of  
11:59:28 3 that powdered sugar produced by American Crystals, right?

11:59:31 4 A. Right.

11:59:32 5 Q. Now, sir, part of your job function is to maximize  
11:59:36 6 the net selling price of the sugar, right?

11:59:38 7 A. That's correct.

11:59:39 8 Q. And United does set the minimum margins for its sales  
11:59:44 9 managers to obtain, correct?

11:59:47 10 A. I don't think I would say that, no.

11:59:49 11 Q. You don't set minimum margins for your sales  
11:59:54 12 managers?

11:59:54 13 A. We do not.

11:59:55 14 Q. I took your deposition back in September of 2021. Do  
11:59:59 15 you recall that?

12:00:00 16 A. Yes, I do.

12:00:01 17 Q. I would like you to turn to your deposition,  
12:00:07 18 page 139, sir?

12:00:08 19 A. Could you tell me what tab again, please.

12:00:10 20 Q. It should say CID depo on the exhibits.

12:00:17 21 A. Okay.

12:00:18 22 Q. For correction, your deposition was October 6, 2021.  
12:00:22 23 Do you see that?

12:00:24 24 A. Yes.

12:00:25 25 Q. If you could flip to page 139, sir, and I'm going to



Swart - direct

12:00:32 1 direct your attention to line 13 first.

12:00:39 2 A. What line, please?

12:00:40 3 Q. Page 139, lines 13 through 18.

12:00:48 4 A. Yeah, I think this is a matter of semantics. We set  
12:00:53 5 minimums for the sales managers as I stated here, but we  
12:00:58 6 don't refer to it as margins. We set a minimum net selling  
12:01:03 7 price at which they are free to accept sales from customers,  
12:01:09 8 below that they have to advance that opportunity for  
12:01:11 9 approval.

12:01:14 10 Q. At your deposition I did ask you the question: "Did  
12:01:16 11 you set a minimum margin that United looks to obtain?"

12:01:20 12 And your answer was: "We set minimums for sales  
12:01:23 13 managers."

12:01:23 14 Correct?

12:01:23 15 A. Yes.

12:01:24 16 Q. You provide exceptions to this minimum sales price  
12:01:28 17 but based on the number of competitors that are involved in  
12:01:30 18 bid, right?

12:01:31 19 A. Would you repeat that for me, please?

12:01:32 20 Q. Do you provide minimum margins or minimum selling  
12:01:37 21 price for your managers to obtain, but you have exceptions  
12:01:40 22 based on the number of competitors that are involved in a  
12:01:43 23 bid; right?

12:01:44 24 A. Well, sir, I wouldn't say that we -- I wouldn't say  
12:01:47 25 that's true. We make exceptions, but it doesn't necessarily

Swart - direct

12:01:52 1 matter how many competitors are involved on that particular  
12:01:57 2 piece of business. We do make exceptions, but it's based on  
12:02:02 3 a host of factors.

12:02:05 4 Q. Can you look at the same line, page 139 of your  
12:02:09 5 deposition, lines 13 through 18, "Question: Do you set  
12:02:12 6 minimum margins that United is looking to obtain?"

12:02:16 7 "Answer: And we set minimums for the sales  
12:02:19 8 managers, but there are -- there are exceptions to those  
12:02:22 9 based on the number of -- the competitors that are involve."

12:02:24 10 Do you see that?

12:02:27 11 A. I see that.

12:02:28 12 Q. Did I ask you that question and did you give me that  
12:02:31 13 answer?

12:02:31 14 A. Yes, sir, I did.

12:02:32 15 Q. If there are more competitors bidding then that  
12:02:35 16 increases the likelihood that one of these exceptions to the  
12:02:38 17 minimum has to be made, right?

12:02:41 18 A. Yes.

12:02:41 19 Q. And United is the one negotiating with customers for  
12:02:44 20 the sale of sugar on behalf of its owners, right?

12:02:48 21 A. That's correct.

12:02:48 22 Q. And during these negotiations there is a give and  
12:02:52 23 take between United and the customer related to price;  
12:02:54 24 correct?

12:02:55 25 A. Yes, sir.

Swart - direct

12:02:56 1 Q. The level at which United competitors price their  
12:03:02 2 sugar, strongly influences United price, right?

12:03:06 3 A. Yes, sir.

12:03:06 4 Q. I want to look at one of the negotiation with one of  
12:03:09 5 your customers. Pepsi is one of United's largest industrial  
12:03:13 6 customers, is that correct?

12:03:14 7 A. That is correct.

12:03:14 8 Q. And United has competed against Imperial for Pepsi's  
12:03:18 9 business at the locations in Wytheville, Virginia and  
12:03:21 10 Atlanta, Georgia?

12:03:23 11 A. We compete against Imperial there as well as other  
12:03:27 12 people.

12:03:27 13 Q. You compete against Imperial at Wytheville, Virginia  
12:03:30 14 and at Atlanta, Georgia?

12:03:31 15 A. That is correct.

12:03:31 16 Q. A few years ago United was the supplier at the Pepsi  
12:03:34 17 Wytheville, Virginia location?

12:03:34 18 A. Yes.

12:03:40 19 Q. And United lost the Pepsi Wytheville, Virginia  
12:03:42 20 business to Imperial?

12:03:42 21 A. Yes.

12:03:47 22 Q. United was won that Pepsi Wytheville, Virginia  
12:03:52 23 business back from Imperial, right?

12:03:52 24 A. That's right.

12:03:54 25 Q. I ask you to turn to PTX 416 in your notebook, sir.

Swart - direct

12:03:58 1 There is a tab that's labeled PTX 416 in your notebook. Do  
12:04:11 2 you have 416?

12:04:12 3 A. I do.

12:04:13 4 Q. PTX 416 is an e-mail from you, Eric Speece and Ted  
12:04:18 5 Guy dated April 26, 2021, correct.

12:04:23 6 A. Yes.

12:04:25 7 MR. HANNA: Your Honor, at this time the United  
12:04:26 8 States moves to admit PTX 416 into evidence. I don't  
12:04:30 9 believe there is any objections, or we will work them out.

12:04:31 10 MS. GIORDANO: No objection.

12:04:34 11 THE COURT: It's admitted.

12:04:36 12 MR. HANNA: Your Honor, may we publish the  
12:04:38 13 document?

12:04:38 14 THE COURT: Any time it's admitted, you don't  
12:04:39 15 have to ask. Thank you.

12:04:41 16 MR. HANNA: Thank you, Your Honor.

12:04:41 17 (PTX Exhibit No. 416 was admitted into  
12:04:42 18 evidence.)

12:04:42 19 BY MR. HANNA:

12:04:42 20 Q. Sir, Eric Speece is the director of strategic  
12:04:42 21 accounts at United?

12:04:42 22 A. That is correct.

12:04:42 23 Q. He's the one that sent you the e-mail, correct?

12:04:51 24 A. That's correct.

12:04:52 25 Q. All right. And Mr. Speece handles the Pepsi

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12:04:55 1 accounts, correct?

12:04:55 2 A. Correct.

12:04:57 3 MS. GIORDANO: Your Honor, I'm sorry to  
12:05:00 4 interrupt. This is one that is redacted, I think the  
12:05:04 5 government knows that it should not be displayed.

12:05:08 6 MR. HANNA: It should be the redacted copy.

12:05:11 7 THE COURT: Thank you.

12:05:12 8 MR. HANNA: Sorry about that, Your Honor.

12:05:13 9 THE COURT: So I guess if it's redacted on the  
12:05:17 10 public screen then we can't put the unredacted on my private  
12:05:21 11 screen. Let me pull it up in case -- okay, go ahead.

12:05:31 12 MR. HANNA: Apologies, Your Honor.

12:05:38 13 THE COURT: That's okay.

12:05:39 14 BY MR. HANNA:

12:05:39 15 Q. At this time United was negotiating with Pepsi for  
12:05:42 16 the 2022 business, right?

12:05:44 17 A. That's correct.

12:05:45 18 Q. I want to look at Mr. Speece, do you see where  
12:05:51 19 Mr. Speece says Imperial freight to Wytheville?

12:05:52 20 A. I do.

12:05:57 21 Q. So, at the time of this e-mail, United had evidence  
12:06:00 22 that Imperial was one of the suppliers to the Wytheville,  
12:06:04 23 Virginia facility, right?

12:06:04 24 A. Yes.

12:06:06 25 Q. And United was competing against Imperial for this

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12:06:09 1 Pepsi Wytheville Virginia facility?

12:06:13 2 A. Right. Yes.

12:06:14 3 Q. The only competitor that Mr. Speece mentions in this  
12:06:17 4 e-mail was Imperial, right?

12:06:19 5 A. That's correct.

12:06:20 6 Q. And Mr. Speece is providing you Imperial's estimated  
12:06:24 7 freight cost to deliver sugar by rail to the Wytheville,  
12:06:28 8 Virginia facilities?

12:06:31 9 A. Yes.

12:06:32 10 Q. It's been redacted in the public screen, those are  
12:06:35 11 estimated freight costs that United is estimating for  
12:06:40 12 Imperial, right?

12:06:40 13 A. That's right.

12:06:41 14 Q. One of the locations, actually, sorry about that. If  
12:06:45 15 you look below that, you see where it says our price in  
12:06:50 16 front of them is, and they be there is some numbers  
12:06:53 17 redacted?

12:06:54 18 A. Yes, I see that.

12:06:55 19 Q. So at the time, United had already -- at the time of  
12:07:00 20 this e-mail, United already made a bid for the Pepsi  
12:07:04 21 business, right?

12:07:05 22 A. That's correct.

12:07:07 23 Q. And do you see below where it says, where Mr. Speece  
12:07:11 24 says our price in front of them is and then there is a  
12:07:14 25 dollar figure, and it says competitive discount of and then

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12:07:18 1 there is a redacted dollar figure?

12:07:21 2 A. Yes, I see that.

12:07:22 3 Q. And I'm trying -- the unredacted copy is in your  
12:07:27 4 notebook, and I would ask you to look at the unredacted  
12:07:30 5 copy. I would caution you not to say the numbers aloud.  
12:07:34 6 I'm going to try to do this confidentially. Your counsel  
12:07:38 7 redacted this.

12:07:39 8 So where it says competitive discount of and  
12:07:43 9 then there is a dollar figure right next to that. Do you  
12:07:46 10 see that dollar figure?

12:07:47 11 A. I do.

12:07:47 12 Q. Now that dollar figure after the competitive discount  
12:07:51 13 of, that represents the competitive discount per  
12:07:54 14 hundredweight of sugar that you understood United had  
12:07:57 15 offered Pepsi in this bid for its business; right?

12:08:02 16 A. Yes, it was in our original offer, that's right.

12:08:05 17 Q. Now, CWT is a measure of volume by hundredweight;  
12:08:09 18 right?

12:08:09 19 A. That's correct.

12:08:10 20 Q. And 100 weight equals a hundred pounds?

12:08:15 21 A. That's correct.

12:08:15 22 Q. I want to look at what Mr. Speece told you next. Do  
12:08:19 23 you see Mr. Speece says, discuss giving Pepsi, then again  
12:08:22 24 there was a redacted dollar figure there, per hundredweight  
12:08:25 25 competitive discount decrease, do you see that?

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12:08:31 1 A. I do.

12:08:32 2 Q. That competitive discount number, that redacted  
12:08:35 3 number, that that was the -- you understood that was an  
12:08:39 4 additional competitive discount that United was willing to  
12:08:43 5 give Pepsi for the business, right?

12:08:45 6 A. That's correct.

12:08:46 7 Q. Now, he next says we may be able to give them their  
12:08:51 8 ask of, again there is a redacted specific dollar value. Do  
12:08:57 9 you see that?

12:08:57 10 A. I do.

12:08:57 11 Q. That second redacted dollar figure is the additional  
12:09:01 12 discount for hundredweight that you understood Pepsi wanted  
12:09:04 13 on top of the initial competitive discount that United  
12:09:08 14 offered, correct?

12:09:08 15 A. Correct.

12:09:09 16 Q. You see Mr. Speece then identifies two conditions  
12:09:14 17 that were in this negotiation with Pepsi, do you see that?

12:09:17 18 A. I do.

12:09:19 19 Q. So you understood that United asked Pepsi to consider  
12:09:22 20 these conditions in order for United to consider this  
12:09:25 21 additional competitive discount that Pepsi was asking for,  
12:09:28 22 right?

12:09:32 23 A. Yes, sir.

12:09:34 24 Q. I want to look at condition number two. For  
12:09:37 25 condition number two you understood that United wanted Pepsi



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12:09:39 1 to increase Imperial's award volume for the Pepsi bulk rail  
12:09:45 2 location, correct?

12:09:46 3 A. Right.

12:09:47 4 Q. As part of the condition, Mr. Speece tells you we  
12:09:49 5 have our eye on Wytheville. Do you see that?

12:09:51 6 A. I do.

12:09:52 7 Q. You understood Mr. Speece to be referring to the  
12:09:55 8 Pepsi Wytheville, Virginia facility.

12:10:00 9 A. I do.

12:10:01 10 Q. You understood United was looking to get back into  
12:10:03 11 the Pepsi Wytheville, Virginia facility after it lost the  
12:10:04 12 business to Imperial?

12:10:12 13 A. I do.

12:10:12 14 Q. I would ask you to turn to PTX 417 in your notebook.  
12:10:24 15 Do you have that 417 pulled up?

12:10:27 16 A. I do.

12:10:28 17 Q. PTX 417 is an e-mail from Eric Speece to some people  
12:10:33 18 at Pepsi and he has copied you?

12:10:34 19 A. Yes, sir.

12:10:36 20 Q. PTX 417 is a follow-up e-mail to the negotiation of  
12:10:42 21 the Pepsi?

12:10:42 22 A. Yes.

12:10:43 23 MR. HANNA: Your Honor, United States admits to  
12:10:46 24 admit PTX 417 and any objections that we worked out.

12:10:50 25 MS. GIORDANO: No objection, but I believe it is

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12:10:51 1 a confidential document.

12:10:52 2 THE COURT: Okay.

12:10:53 3 (PTX Exhibit No. 417 was admitted into  
12:10:55 4 evidence.)

12:10:55 5 BY MR. HANNA:

12:10:56 6 Q. Sir, please turn to the bottom of page 2 to the  
12:10:58 7 e-mail from Fany Fernandez. It's at 3:48 p.m. Do you see  
12:11:05 8 that, sir?

12:11:05 9 A. I do.

12:11:06 10 Q. This is on page 2?

12:11:07 11 A. I have got it.

12:11:08 12 Q. Now, Fany Fernandez is the manager level purchasing  
12:11:12 13 agent at Pepsi, right?

12:11:14 14 A. I think she's director level.

12:11:16 15 Q. Director level?

12:11:17 16 A. Yes.

12:11:18 17 Q. And do you see where she writes, please review the  
12:11:22 18 attached. Overall the ask is of a -- and then there is  
12:11:26 19 another redacted dollar figure there, additional discount.  
12:11:30 20 Do you see that?

12:11:31 21 A. I do.

12:11:32 22 Q. You understood that Pepsi was, again, asking for an  
12:11:35 23 additional price discount for hundredweight equal to that  
12:11:38 24 dollar figure that's been redacted, right?

12:11:42 25 A. Correct.

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12:11:43 1 Q. Now, let's turn the page. Do you see there is some  
12:11:48 2 bullet points that Ms. Fernandez has there. She wrote the  
12:11:53 3 proposal considers the following volume allocation and terms  
12:11:58 4 and there are some bullet points. Do you see that?

12:12:00 5 A. No, I'm sorry. Oh, I do, I see it is on the next  
12:12:05 6 page.

12:12:06 7 Q. Yes, sir. Page 3?

12:12:08 8 A. Sorry.

12:12:08 9 Q. No need to apologize.

12:12:10 10 So the first bullet point, do you see where  
12:12:13 11 Ms. Fernandez says including blue ridge as originally  
12:12:17 12 requested?

12:12:17 13 A. I do.

12:12:17 14 Q. So Blue Ridge is the Pepsi Wytheville Virginia  
12:12:21 15 facility that we have been talking about today, correct?

12:12:24 16 A. Correct.

12:12:25 17 Q. You understand that United agreed to the additional  
12:12:28 18 discount per hundredweight mentioned on the previous page,  
12:12:31 19 then United would be awarded the business, right?

12:12:34 20 A. That's correct.

12:12:36 21 Q. So I want to look at, there is an attached  
12:12:40 22 spreadsheet to this document, and Your Honor what we have  
12:12:43 23 done here is for ease of asking the questions and the  
12:12:50 24 agreement with the parties, we have provided a demonstrative  
12:12:54 25 that just shows, it's quite large spreadsheet so we're

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12:12:59 1 showing part of the spreadsheet, I believe counsel has seen  
12:13:03 2 them. We're not marking as an exhibit the underlying  
12:13:06 3 spreadsheet attachment will be entered as an exhibit.

12:13:10 4 BY MR. HANNA:

12:13:11 5 Q. And, sir, this document, if you look at the  
12:13:15 6 spreadsheet, do you see the spreadsheet in your note book  
12:13:22 7 behind the--

12:13:23 8 A. I do.

12:13:23 9 Q. Can you pull it up on the screen.

12:13:38 10 Sir, the prices in the attached spreadsheet that  
12:13:41 11 we're looking at are the final seller prices that United and  
12:13:44 12 Pepsi agreed to for 2022; is that right?

12:13:47 13 A. Well, this looks like only a portion of a much larger  
12:13:51 14 spreadsheet.

12:13:54 15 Q. Correct.

12:13:57 16 A. Are we clear on that.

12:13:58 17 Q. And if you want to view it on native I'm happy to  
12:14:02 18 give it to you.

12:14:02 19 A. No, I don't need it, but I want to make sure this  
12:14:06 20 isn't being considered all of the Pepsi locations and  
12:14:09 21 volume.

12:14:12 22 Q. But the Pepsi locations that are displayed on that  
12:14:16 23 demonstrative are locations that you bid on and they are the  
12:14:19 24 final prices for those locations that you were awarded  
12:14:23 25 volume, right?

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12:14:23 1 A. Yeah, we were awarded volume to some of these  
12:14:26 2 locations.

12:14:27 3 Q. Now, this spreadsheet shows that United won the  
12:14:31 4 Wytheville, Virginia business from 2022 back from Imperial,  
12:14:35 5 right?

12:14:35 6 A. We were -- yes, that's correct.

12:14:37 7 Q. And if you look at rows I believe it's 34 and 35,  
12:14:42 8 that is showing the terms and the price and the locations  
12:14:47 9 for the Wytheville, Virginia business?

12:14:51 10 A. That is correct.

12:14:52 11 Q. In spreadsheet shows you increased the competitive  
12:14:56 12 discount to win Wytheville, Virginia business?

12:15:00 13 A. These competitive discounts are actually determined  
12:15:04 14 by Pepsi.

12:15:04 15 Q. So you agreed to an increase in competitive discount  
12:15:08 16 with Pepsi, right?

12:15:09 17 A. We agreed to an increase in the total competitive  
12:15:13 18 discount, the individual locations and their competitive  
12:15:16 19 discounts are determined by Pepsi.

12:15:18 20 Q. And you agreed to those, right?

12:15:20 21 A. We did.

12:15:21 22 Q. Now, let's look at Row 8, column K. Do you see that?

12:15:30 23 A. Yes, sir, I do.

12:15:31 24 Q. That dollar figure in cell K8 is the weighted  
12:15:35 25 competitive average competitive discount across all Pepsi

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12:15:40 1 locations that United agreed?

12:15:41 2 A. That's correct.

12:15:41 3 Q. And you agreed to the prices of the sugar to the  
12:15:44 4 Wytheville, Virginia facility from the Clewiston refinery?

12:15:49 5 A. That's correct.

12:15:49 6 Q. And United uses the Clewiston refinery to price the  
12:15:53 7 share because the Clewiston refinery is the closest United  
12:15:57 8 plant to the Wytheville?

12:15:58 9 A. Right, that's consistent with our pricing convention,  
12:16:03 10 yes.

12:16:03 11 Q. Your price convention is that you priced the sugar  
12:16:06 12 from the United, from the origin that's closest to the  
12:16:11 13 customer; right?

12:16:12 14 A. That's correct.

12:16:14 15 Q. So you might price the sugar from Clewiston to the  
12:16:21 16 location that's closest to Clewiston, right?

12:16:24 17 A. That is correct.

12:16:25 18 Q. You do elect sometimes to ship that sugar from  
12:16:29 19 somewhere else?

12:16:29 20 A. That's correct.

12:16:29 21 Q. But the customer pays the price I believe it's from  
12:16:34 22 Clewiston?

12:16:35 23 A. That's right.

12:16:39 24 Q. Now, if you look at that spreadsheet and you see the  
12:16:42 25 competitive discount for Wytheville, Virginia in rows 34 and

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12:16:47 1 35?

12:16:48 2 A. I do.

12:16:54 3 Q. And I believe that's row 34 and 35, column K, right?

12:17:04 4 A. Yes, that's correct.

12:17:05 5 Q. And that was the competitive discount that you

12:17:08 6 offered and agreed to give Pepsi for the Wytheville,

12:17:12 7 Virginia business, right?

12:17:14 8 A. Yes, that is.

12:17:14 9 Q. And if you recall the earlier e-mail, that original

12:17:18 10 competitive discount that United offered to Pepsi, the

12:17:21 11 numbers in this spreadsheet are higher, right?

12:17:24 12 A. They are to that location, that's correct.

12:17:28 13 Q. To the Wytheville, Virginia location?

12:17:31 14 A. That is correct.

12:17:34 15 Q. I have some questions about United's strategy to

12:17:41 16 reduce sales to distributors in the Chicago area. I would

12:17:44 17 like you to turn to PTX 507 now, sir.

12:17:51 18 A. Okay.

12:18:00 19 Q. PTX 507 is an e-mail from United's CEO Matthew

12:18:07 20 Wineinger dated July 15, 2019, and he copied you on this

12:18:11 21 e-mail?

12:18:14 22 A. Yes.

12:18:17 23 Q. And Mr. Wineinger is sending this e-mail with

12:18:19 24 attachment to the United board of directors, correct?

12:18:19 25 A. Correct.

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12:18:18 1 MR. HANNA: Your Honor, at this time United  
12:18:20 2 States moves to admit PTX 507 into evidence.

12:18:24 3 MS. GIORDANO: No objection.

12:18:24 4 THE COURT: All right. Thank you.

12:18:24 5 (PTX Exhibit No. 507 was admitted into  
12:18:28 6 evidence.)

12:18:28 7 BY MR. HANNA:

12:18:29 8 Q. Sir, I'm going to look at page 2 and look at the  
12:18:32 9 agenda for this June 5th, 2019, United board meeting. Sir,  
12:18:34 10 you're listed on this agenda for the update of this two-year  
12:18:41 11 audit of the Montgomery dome, right?

12:18:47 12 A. I am.

12:18:48 13 Q. Now the Montgomery dome is a storage facility in the  
12:18:53 14 Chicago area where the United unloads railcar sugar and  
12:18:57 15 transfer that sugar to Chicago area customers; is that  
12:19:02 16 right?

12:19:02 17 A. That is right.

12:19:03 18 Q. And this dome was put online January 2017, is that  
12:19:06 19 right?

12:19:06 20 A. Yes, that's about right.

12:19:08 21 Q. And your recollection is the United Vice-President  
12:19:12 22 of Finance, Kae Kaske, presented on this audit for the  
12:19:18 23 Montgomery dome, is that right?

12:19:22 24 A. Kae prepared the deck and did the presenting.

12:19:23 25 Q. And you attended the presentation?



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12:19:25 1 A. I did.

12:19:26 2 Q. And you recall the presentation?

12:19:28 3 A. I do.

12:19:32 4 Q. If we can turn to slide 5, page 10 of 59. Do you see  
12:19:41 5 at the top where it says Montgomery post audit increase  
12:19:46 6 customer revenue?

12:19:47 7 A. I do.

12:19:47 8 Q. Now this slide is describing the sales strategy that  
12:19:51 9 United put in place in Chicago, right?

12:19:55 10 A. Yes, it is.

12:19:56 11 Q. In the Chicago area?

12:19:59 12 A. Yeah.

12:20:00 13 Q. I want to focus on the second bullet point where it  
12:20:04 14 says strategy. Do you see that?

12:20:05 15 A. I do.

12:20:07 16 Q. The first note about the strategy says eliminate  
12:20:11 17 dependence on Batory Food, do you see that?

12:20:14 18 A. I do.

12:20:17 19 Q. Batory Foods is a distributor reseller in the Chicago  
12:20:19 20 area that United relied on make sales to customers, right?

12:20:22 21 A. That's not right, our dependence on Batory Food was  
12:20:24 22 for car to truck transfer services and liquification  
12:20:30 23 services that the bulk to truck transfer we no longer needed  
12:20:32 24 because that's what Montgomery was built to do.

12:20:42 25 Q. Because you built Montgomery you no longer needed

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12:20:46 1 Batory Foods and other distributors to provide that service  
12:20:50 2 to United, right?  
12:20:51 3 A. Right.  
12:20:52 4 Q. One was the bulk rail to truck transfer, right?  
12:20:55 5 A. That's correct.  
12:20:56 6 Q. That would be instead of using Batory Food to help  
12:20:59 7 with that, United would go sell directly to customer, right?  
12:21:02 8 A. That's correct.  
12:21:05 9 Q. I want to look at the second note, the second note  
12:21:08 10 for strategy says increase direct bag shipments to  
12:21:11 11 customers, do you see that?  
12:21:13 12 A. I do.  
12:21:13 13 Q. That strategy was to reduce the volume of bulk sugar  
12:21:17 14 that United sold to distributors and instead sell 50 pound  
12:21:21 15 bags direct to customers; correct?  
12:21:24 16 A. Well, yeah, the strategy was to sell more sugar  
12:21:27 17 directly to small and medium size bag users.  
12:21:31 18 Q. Instead of selling to distributors, United would sell  
12:21:34 19 direct to end user customers?  
12:21:40 20 A. Yeah, that's correct.  
12:21:42 21 Q. The third note here says increase prices to Chicago  
12:21:42 22 area distributors, do you see that?  
12:21:42 23 A. I do.  
12:21:42 24 Q. So as a consequence of this strategy to eliminate  
12:21:52 25 distributors, United was able to increase prices to

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12:21:57 1 distributors in the Chicago area, right?

12:21:59 2 A. That's correct. But this -- I didn't prepare this  
12:22:04 3 slide, and I think it appropriate to say that increasing the  
12:22:09 4 prices to Chicago area distributors was not part of the  
12:22:12 5 original strategy. We did end up getting more money from  
12:22:17 6 distributors, we sold a lot of sugar to small and medium  
12:22:20 7 size bag users, so that took some of the volume pressure  
12:22:24 8 off, and prices to the Chicago area distributors did go up,  
12:22:29 9 we were able to reduce the discount that we had to give  
12:22:32 10 them.

12:22:34 11 Q. Now, you considered the sales strategy in Chicago to  
12:22:38 12 be a success, right?

12:22:39 13 A. I do.

12:22:40 14 Q. And this is sometimes called the Chicago strategy,  
12:22:43 15 right?

12:22:44 16 A. Correct.

12:22:44 17 Q. And you eventually recommended a similar strategy to  
12:22:48 18 be implemented in the southeast correct?

12:22:51 19 A. Correct.

12:22:52 20 Q. Let's look at that southeast market strategy. I  
12:22:55 21 would like you to turn to PTX 452 in your notebook, sir.

12:23:00 22 A. I see that.

12:23:10 23 Q. PTX 452 is a set of materials for a March 16, 2020,  
12:23:15 24 United executive committee meeting. Is that right?

12:23:18 25 A. That is correct.

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12:23:19 1 Q. United executive committee is comprised of the CEOs  
12:23:24 2 of United owners including the CEO of US Sugar, Bob Buker,  
12:23:30 3 is that correct?

12:23:30 4 A. That's correct.

12:23:30 5 Q. You attended this March 16, 2020, executive committee  
12:23:34 6 meeting, right?

12:23:35 7 A. I did.

12:23:35 8 MR. HANNA: Your Honor, at this time United  
12:23:37 9 States moves to admit PTX 452 into evidence.

12:23:40 10 THE COURT: Any objection?

12:23:41 11 MS. GIORDANO: No objection, Your Honor.

12:23:41 12 THE COURT: Thank you. It's admitted.

12:23:41 13 (PTX Exhibit No. 452 was admitted into  
12:23:47 14 evidence.)

12:23:47 15 BY MR. HANNA:

12:23:47 16 Q. Sir, I want to stick on the first page. The first  
12:23:50 17 page of PTX 452 is an approved agenda for this executive  
12:23:51 18 committee meeting on March 16, 2020, is that right?

12:23:51 19 A. Yes.

12:23:52 20 Q. Let's focus on the strategic update. Do you see  
12:24:00 21 that?

12:24:00 22 A. I do.

12:24:00 23 Q. Now agenda subject number two is identified as  
12:24:00 24 regional markets overview, do you see that?

12:24:11 25 A. I do.

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12:24:12 1 Q. And in the first subheading under regional markets  
12:24:16 2 overview is Florida/Southeast market. Do you see that?

12:24:20 3 A. I do.

12:24:21 4 Q. And then your name, sir, is identified in parenthesis  
12:24:27 5 under this regional markets overview, right?

12:24:30 6 A. It is, yes.

12:24:31 7 Q. And you participated in the presentation to the  
12:24:34 8 executive committee on the subject of regional markets  
12:24:37 9 overview, right?

12:24:37 10 A. You I don't remember presenting any of these  
12:24:41 11 materials, the materials were prepared by Steve Hanson, and  
12:24:44 12 as I recall it, he did the overwhelming majority of  
12:24:49 13 presenting. I don't recall presenting any of these  
12:24:51 14 materials.

12:24:51 15 Q. But you attended the meeting?

12:24:52 16 A. I did.

12:24:53 17 Q. And you attended the session when you discussed the  
12:24:56 18 Southeast market and the regional market?

12:24:59 19 A. I did.

12:25:00 20 Q. Let's turn to the regional market overview  
12:25:03 21 presentation, it starts on page 17. So this is a regional  
12:25:10 22 markets overview supplied that were provided to United, the  
12:25:23 23 CEOs of United, right?

12:25:25 24 A. Yes.

12:25:26 25 Q. Now, and you reviewed this presentation before it was

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12:25:28 1 presented, right?

12:25:29 2 A. I did.

12:25:30 3 Q. Now, let's look -- turn to page 20 of this  
12:25:33 4 presentation. The numbers are on the top right. Do you see  
12:25:50 5 the --

12:25:50 6 A. Yeah, I'm there.

12:25:51 7 Q. Do you see the map?

12:25:52 8 A. I do.

12:25:53 9 Q. All right. Now this is a map created by United that  
12:25:54 10 shows markets where different sugar producers have freight  
12:26:00 11 cost advantages, right?

12:26:02 12 A. Yeah, it's a map that reflects groups of states and  
12:26:07 13 identifies the producing locations within those groups of  
12:26:11 14 states.

12:26:11 15 Q. And the title of the slide is regional markets  
12:26:14 16 overview, right?

12:26:15 17 A. That's correct.

12:26:16 18 Q. And that's regional markets is being referred to the  
12:26:20 19 different collection of states that are in different colors,  
12:26:22 20 right?

12:26:22 21 A. Yeah, that's correct.

12:26:22 22 Q. And each colored market represents the locations  
12:26:23 23 where a sugar producer located in that market has a freight  
12:26:32 24 cost advantage, right?

12:26:32 25 A. That's correct.

Swart - direct

12:26:35 1 Q. And this map was provided to the CEOs of United had  
12:26:41 2 includes Bob Buker?

12:26:42 3 A. That's correct.

12:26:43 4 Q. The title of this slide is USC definition (supplier  
12:26:47 5 backyard). Do you see that?

12:26:48 6 A. I do.

12:26:49 7 Q. USC means United Sugar Corporation?

12:26:52 8 A. That's correct.

12:26:52 9 Q. And supplier backyards means the markets which the  
12:26:56 10 producers that are identified in those markets have a  
12:27:00 11 freight advantage, right?

12:27:01 12 A. That's correct.

12:27:02 13 Q. And the black triangles on this map represent the  
12:27:07 14 beet sugar processing facilities, right?

12:27:09 15 A. Yes, that's correct.

12:27:11 16 Q. And the black triangles in the orange shaded market  
12:27:14 17 are the beet sugar production plants of United and NSM in the  
12:27:21 18 Red River Valley?

12:27:21 19 A. That's correct.

12:27:22 20 Q. And United's highest concentration of sales is in the  
12:27:27 21 upper midwestern states, right?

12:27:31 22 A. Yes, that's correct.

12:27:32 23 Q. Now the red triangles on this map represent cane  
12:27:37 24 refined sugar, right?

12:27:39 25 A. That's correct.

Swart - direct

12:27:40 1 Q. I want to focus on the collection of states that are  
12:27:43 2 shade had in red, the southeast location, do you see that?

12:27:48 3 A. I do.

12:27:48 4 Q. If a customer is located in the southeast market, US  
12:27:52 5 Sugar, Imperial and Domino have a freight cost advantage  
12:27:57 6 compared to competitors located outside that southeast  
12:28:00 7 market, right?

12:28:00 8 A. That's what the map depicts.

12:28:03 9 Q. Now, customers that United supplies in the southeast  
12:28:07 10 predominantly get sugar from the Clewiston refinery, right?

12:28:11 11 A. Predominantly, yes.

12:28:13 12 Q. And United's secondary of high concentration of sugar  
12:28:16 13 sold is in the southeast market; right?

12:28:21 14 A. Yes, that's correct.

12:28:23 15 Q. And customers located in a southeast market  
12:28:30 16 predominantly get sugar from a Clewiston refinery because  
12:28:35 17 Clewiston is the lowest cost way to get sugar to United's  
12:28:40 18 customers that are located in the southeast, right?

12:28:42 19 A. Yes, that's right.

12:28:43 20 Q. And the freight rate from Clewiston into the  
12:28:45 21 southeast market are lower than the Red River Valley to the  
12:28:48 22 southeast market; right?

12:28:50 23 A. Yes, that's correct.

12:28:52 24 Q. I want to turn to slide 34 of this regional market  
12:28:55 25 presentation.



Swart - direct

- 12:29:08 1 A. Do you have a page number?
- 12:29:12 2 Q. Page 34. Ending in Bates number 2462, at the top it
- 12:29:34 3 says USC southeast strategy.
- 12:29:38 4 A. Give me just a second. Okay. I see it.
- 12:29:47 5 Q. Now, this southeast strategy slide is an overview of
- 12:29:51 6 what the United management was recommended to the executive
- 12:29:55 7 committee for sales strategy in the southeast market; right?
- 12:29:58 8 A. That's correct.
- 12:29:59 9 Q. Now, the left side of this southeast strategy slide
- 12:30:05 10 is focusing on the sales strategy for industrial customers;
- 12:30:09 11 right?
- 12:30:09 12 A. That's correct.
- 12:30:10 13 Q. And on the right side, it's focusing on the sales
- 12:30:14 14 strategy for the consumer or retail customers?
- 12:30:17 15 A. Correct.
- 12:30:17 16 Q. I want to focus on the left side, the industrial
- 12:30:20 17 customers. Do you see where on the left-hand side slide it
- 12:30:21 18 says similar to Chicago strategy, do you see that?
- 12:30:28 19 A. Yes.
- 12:30:29 20 Q. This is referring to the Chicago strategy that we
- 12:30:32 21 talked about earlier in your testimony, right?
- 12:30:34 22 A. That's correct.
- 12:30:34 23 Q. And the recommendation was to apply the Chicago sales
- 12:30:36 24 strategy to the southeast market, right?
- 12:30:40 25 A. That is correct.

Swart - direct

12:30:40 1 Q. Now, the strategy was to margin up by selling more  
12:30:44 2 bagged sugar to customers in the southeast market, right?

12:30:48 3 A. That is correct.

12:30:49 4 Q. Including 50-pound bags of sugar, right?

12:30:52 5 A. Yes. Specifically 50-pound bags.

12:30:56 6 Q. Now, because United freight advantage out of  
12:31:10 7 Clewiston, Florida, United saw an opportunity to win  
12:31:13 8 business in the southeast market, right?

12:31:16 9 A. Yeah, that's true, but I think the bigger issue was  
12:31:21 10 that we saw an opportunity to ship more 50-pound fine gran,  
12:31:25 11 which is an efficient product for us to manufacture and it  
12:31:29 12 increases the net selling price. So this -- we were focused  
12:31:34 13 on the southeast but some of those bags were going to go  
12:31:38 14 beyond that red state geographic group.

12:31:42 15 Q. You saw an opportunity to increase the net selling  
12:31:45 16 price into the southeast market, right?

12:31:48 17 A. That's correct, yes.

12:31:49 18 Q. 50-pound bags is a profitable product for United, is  
12:31:54 19 that correct?

12:31:54 20 A. That's correct.

12:31:58 21 Q. At the time of this slide, US Sugar did have 50-pound  
12:32:00 22 bags packaging capability, right?

12:32:03 23 A. Yes, we did.

12:32:04 24 Q. U.S. Sugar still produces 50-pound bags out of  
12:32:08 25 Clewiston?

Swart - direct

12:32:09 1 A. That's correct.

12:32:10 2 Q. Two 50-pound bagging lines?

12:32:12 3 A. Yes.

12:32:12 4 Q. Do you see the bullet point on this slide where it  
12:32:15 5 says needs?

12:32:15 6 A. I do.

12:32:16 7 Q. United management was recommending, the United  
12:32:21 8 management recommendation was to invest in adding 50-pound  
12:32:24 9 bag and super sack packaging capability in Clewiston, right?

12:32:30 10 A. That's correct.

12:32:32 11 Q. But to your knowledge the southeast strategy being  
12:32:34 12 recommended was not dependent on the acquisition of  
12:32:39 13 Imperial; right?

12:32:40 14 A. Yes, to my knowledge, it was not.

12:32:44 15 Q. The Imperial acquisition means you no longer need to  
12:32:49 16 invest in the bagging equipment at Clewiston to compete for  
12:32:52 17 more sales in the southeast, right?

12:32:55 18 A. Well, I don't know that, no.

12:32:56 19 Q. Well, you understand, it's your understanding that  
12:32:59 20 the money for this expansion has not been spent?

12:33:02 21 A. That's correct.

12:33:03 22 Q. And you understand that Imperial does have 50-pound  
12:33:07 23 bag packaging capability at its refinery?

12:33:12 24 A. Yes.

12:33:12 25 Q. And you understand Imperial has super sack capable at

Swart - direct

12:33:17 1 it refinery in Georgia?

12:33:18 2 A. I believe I understand that.

12:33:19 3 Q. You believe that United with may not have to spend  
12:33:22 4 money on packaging equipment at Clewiston if US Sugar  
12:33:28 5 acquires Imperial?

12:33:29 6 A. I don't know that.

12:33:30 7 Q. Sir, I took your deposition back in February of this  
12:33:33 8 year, do you recall that?

12:33:34 9 A. I do.

12:33:35 10 Q. I would like you to turn to your litigation  
12:33:39 11 deposition at page 228?

12:33:51 12 A. What page, please.

12:33:52 13 Q. 148, starting at line 24. We're going to go through  
12:33:59 14 page 149, line 11. I'll read the question and answer when  
12:34:05 15 you have a second to review it. Are you on page 148  
12:34:14 16 line 24?

12:34:15 17 A. I am 4.

12:34:16 18 Q. "Question: How will United in your view benefit from  
12:34:20 19 access to these additional packaging assets at Imperial?

12:34:24 20 "Answer: Well, I believe that depending on how  
12:34:27 21 -- what kind of capability there is for packaging 50-pound  
12:34:31 22 bags as an example at Imperial that the benefits to United  
12:34:34 23 would be that we would have those packaging assets and we  
12:34:37 24 might not have to spend the money on the packaging equipment  
12:34:40 25 at Clewiston."

Swart - direct

12:34:41 1 A. I see that.

12:34:42 2 Q. Did I ask you that question and did you give me that  
12:34:44 3 answer?

12:34:45 4 A. I did.

12:34:45 5 Q. You can set PTX 452 aside.

12:34:49 6 Now, I would like you to turn to PTX 429 in your  
12:34:54 7 notebook.

12:35:14 8 A. Okay.

12:35:16 9 Q. Sir, PTX 429 is an e-mail from updated February 11,  
12:35:21 10 2021, that you sent to some of your colleagues at United,  
12:35:24 11 right?

12:35:24 12 A. I did.

12:35:25 13 Q. And you sent this e-mail to a bunch of members of the  
12:35:30 14 industrial sales team, right?

12:35:31 15 A. Well, it's all the members of my team, yes.

12:35:34 16 Q. All the members of the industrial sale team?

12:35:34 17 A. Correct.

12:35:37 18 MR. HANNA: Your Honor, at this time United  
12:35:39 19 States moves to admit PTX 429 into evidence.

12:35:42 20 THE COURT: All right. It's admitted.

12:35:42 21 (PTX Exhibit No. 429 was admitted into  
12:35:47 22 evidence.)

12:35:47 23 MR. HANNA: I don't believe there are any  
12:35:48 24 redactions on this.

12:35:50 25 BY MR. HANNA:

Swart - direct

12:35:50 1 Q. Sir, in your e-mail you're providing your assessment  
12:35:52 2 of a company called Sucro Sourcing, is that right?

12:35:56 3 A. That's correct.

12:35:56 4 Q. And prior to this e-mail, you had spoken to one of  
12:36:00 5 Sucro Sourcing principles, Don Hill?

12:36:04 6 A. That's correct.

12:36:05 7 Q. And you and Mr. Hill talked about Sucro Source's  
12:36:09 8 facility being built in Lackawanna, New York?

12:36:13 9 A. Well, I had talked to, I had talked to him about it.  
12:36:19 10 The reason for this e-mail was that there had been a  
12:36:23 11 newspaper article I believe that appeared in the Buffalo  
12:36:26 12 paper, and it had gotten whipped around the industry and  
12:36:31 13 several of the people in my group were forwarding it and  
12:36:37 14 were asking questions about what we do about what was going  
12:36:41 15 on.

12:36:41 16 Q. You went and endeavored to find out what you could  
12:36:44 17 about this Sucro Sourcing facility in New York, right?

12:36:48 18 A. Pardon?

12:36:49 19 Q. You went and endeavored to assess what this facility  
12:36:54 20 from Sucro Sourcing in Lackawanna, New York was?

12:36:59 21 A. Well, there were questions coming as a result of the  
12:37:02 22 article.

12:37:02 23 Q. And your assessment of that facility in Lackawanna  
12:37:06 24 from Sucro Sourcing is in the e-mail?

12:37:12 25 A. I don't remember talking to Don Hill about it. I

Swart - direct

12:37:14 1 don't think most of this information came either from the  
12:37:16 2 article itself or from a guy by the name of Kyle Whitburg  
12:37:20 3 from Sweeteners Supplies.

12:37:22 4 Q. Let's look at what you said in your e-mail, sir.

12:37:25 5 A. Okay.

12:37:26 6 Q. Do you see where you said it small 40 to 50,000 ton  
12:37:30 7 liquid operation?

12:37:31 8 A. I do.

12:37:31 9 Q. And by liquid operation, you mean Sucro Sourcing is  
12:37:35 10 producing liquid sugar, right?

12:37:38 11 A. That's correct.

12:37:39 12 Q. I want to move down one paragraph. Do you see where  
12:37:41 13 you say so just one more CSC type operation. Do you see  
12:37:50 14 that?

12:37:50 15 A. I do.

12:37:51 16 Q. Now CSC is referring to another liquid sugar producer  
12:37:54 17 called CSC Sugar, right?

12:37:58 18 A. That's correct.

12:38:01 19 Q. I want to go to, I think it's the very bottom of your  
12:38:02 20 e-mail, and do you see where you say, "so, small, high color  
12:38:11 21 liquid sucrose. We don't like it, but it's hardly a threat  
12:38:12 22 to our business."

12:38:17 23 Do you see that?

12:38:18 24 A. I do.

12:38:19 25 Q. That's what you wrote, right?

Swart - direct

12:38:21 1 A. That's what I wrote, that's correct, because that  
12:38:25 2 facility in Lackawanna, New York is not really in a market  
12:38:31 3 that we participate aggressively in.

12:38:35 4 Q. It was your assessment that Sucro Sourcing facility  
12:38:38 5 was not a threat to United, right?

12:38:40 6 A. Because it's in Lackawanna, New York, that is  
12:38:45 7 correct.

12:38:45 8 Q. You can set that document to the side.

12:38:48 9 Now, I want to talk about pricing information in  
12:38:51 10 the market. You testified at your deposition that customers  
12:38:51 11 will sometimes convey your competitor's pricing, do you  
12:38:51 12 recall that?

12:38:51 13 A. Yes.

12:39:00 14 Q. And that is true, right?

12:39:02 15 A. It is true.

12:39:03 16 Q. And the customer feedback usually includes how  
12:39:07 17 United's pricing compares to United's competitors, right?

12:39:11 18 A. Yes, that's correct.

12:39:12 19 Q. And you testified at your deposition that you believe  
12:39:15 20 customers use the pricing that they get from alternative  
12:39:18 21 suppliers to leverage the price down from United, right?

12:39:21 22 A. That's correct.

12:39:22 23 Q. And this strategy of customers using pricing from  
12:39:24 24 competitors to leverage prices down is proven to be  
12:39:30 25 destructive for United, right?



Swart - direct

12:39:32 1 A. No, that's correct.

12:39:33 2 Q. And you believe this dynamic has been destructive  
12:39:37 3 because prices get pushed down, correct?

12:39:40 4 A. During the deposition process, that's correct.

12:39:42 5 Q. Because they have pricing from your competitors?

12:39:45 6 A. That's correct.

12:39:46 7 Q. And you believe that the customers wanted United to  
12:39:50 8 believe that they had the lower price in hopes that United  
12:39:52 9 is going to continue to reduce its price, right?

12:39:55 10 A. Correct.

12:39:56 11 Q. So when competitors offer customers a lower price, it  
12:40:00 12 can have an effect on pushing United's prices down?

12:40:04 13 A. I'm sorry, would you say that again, please.

12:40:06 14 Q. When competitors offer customers a lower price, it  
12:40:10 15 can have an effect of pushing United's prices down, right?

12:40:14 16 A. Yeah, that's correct.

12:40:16 17 Q. But it's in United's interests to avoid its prices  
12:40:21 18 being pushed down, right?

12:40:21 19 A. Yeah, that's correct.

12:40:24 20 Q. Now, if you had better information about what your  
12:40:28 21 competitor's actual prices were, you could better avoid  
12:40:32 22 these destructive situations, couldn't you?

12:40:37 23 A. Yes.

12:40:37 24 Q. Please turn to PTX 432 in your notebook. Do you have  
12:40:52 25 that?

Swart - direct

12:40:56 1 A. I do.

12:40:57 2 Q. PTX 432 is an e-mail from you to Mr. Speece and you  
12:41:01 3 copied Steve Hanson, right?

12:41:04 4 A. Yes.

12:41:05 5 MR. HANNA: Your Honor, at this time the United  
12:41:07 6 States moves to admit PTX 432 into evidence.

12:41:10 7 THE COURT: All right. Thank you. It's  
12:41:12 8 admitted.

12:41:13 9 (PTX Exhibit No. 432 was admitted into  
12:41:14 10 evidence.)

12:41:14 11 BY MR. HANNA:

12:41:15 12 Q. All right, sir. I want to direct your attention to  
12:41:18 13 the first -- to an e-mail from Mr. Speece from someone named  
12:41:24 14 Rich at Commodity Information. Do you see that e-mail?

12:41:29 15 A. I do.

12:41:30 16 Q. November 16, 2020.

12:41:32 17 A. I do.

12:41:32 18 Q. Rich at Commodity Information is somebody by the name  
12:41:37 19 of Rich Wistisen?

12:41:39 20 A. That is correct.

12:41:40 21 Q. I understand Mr. Speece and Mr. Wistisen communicated  
12:41:45 22 to each other?

12:41:46 23 A. Yes, I do.

12:41:47 24 Q. Mr. Speece is a direct report to you, right?

12:41:49 25 A. That's correct.

Swart - direct

12:41:49 1 Q. And you think Mr. Speece is one of the future leaders  
12:41:53 2 at United, right?

12:41:55 3 A. He has been identified, yeah.

12:41:58 4 Q. Mr. Speece is part of a small group called the  
12:42:04 5 Pricing Council that was formed at your suggestion, right?

12:42:08 6 A. That's correct.

12:42:09 7 Q. Now, I want to turn to the bottom of Mr. Wistisen's  
12:42:14 8 e-mail to Mr. Speece. Do you see Mr. Wistisen asked  
12:42:20 9 Mr. Speece, what are you hearing on domestic and raw and  
12:42:25 10 refined pricing?

12:42:26 11 A. Yes.

12:42:27 12 Q. He asked Mr. Speece where you would put both spot  
12:42:32 13 prices and also forward beet prices, right?

12:42:36 14 A. Yes, I see that.

12:42:37 15 Q. Mr. Speece forwarded you this e-mail from  
12:42:40 16 Mr. Wistisen with some questions. I want to look at his  
12:42:43 17 e-mail to you. Back on the first page. Do you see that,  
12:42:48 18 sir?

12:42:48 19 A. I do.

12:42:49 20 Q. So Mr. Speece asked you, "Should I let him know we  
12:42:52 21 are out of the market for the time being or selectively  
12:42:54 22 selling?"

12:42:55 23 That's what he asked you, right?

12:42:56 24 A. Yes, I see that.

12:42:57 25 Q. But you actually wanted Mr. Wistisen to hear

Swart - direct

12:43:03 1 something more specific about United's pricing position than  
12:43:06 2 what Mr. Speece was asking, right?

12:43:08 3 A. Well, we participate in his pricing survey, so yeah,  
12:43:14 4 I indicated the prices that should go into that survey, yes.

12:43:19 5 Q. We'll look at your e-mail in a second, but  
12:43:23 6 Mr. Speece's question to you didn't say anything about  
12:43:25 7 giving Mr. Wistisen pricing or pricing strategy?

12:43:29 8 A. No, that's correct.

12:43:30 9 Q. Let's look at your response to Mr. Speece. You wrote  
12:43:34 10 here, "I'd like him to hear \$36.50/\$38 and probably moving  
12:43:44 11 higher based on the strength of the booked position. Stop  
12:43:47 12 short of saying anything about being oversold."

12:43:51 13 That was the specific pricing information that  
12:43:54 14 you wanted Mr. Wistisen to hear; right?

12:43:57 15 A. Yes.

12:43:58 16 Q. Now, the \$36.50 that you refer to in your e-mail is  
12:44:04 17 the beet price?

12:44:06 18 A. Yes.

12:44:06 19 Q. And the \$38 you referenced in your e-mail is cane  
12:44:10 20 price?

12:44:12 21 A. That's correct.

12:44:12 22 Q. When you said booked position, you're referring to  
12:44:15 23 how far along United is to having its sugar sold out, right?

12:44:19 24 A. That's correct.

12:44:20 25 Q. That's sold position, right?

Swart - direct

12:44:22 1 A. That's correct.

12:44:22 2 Q. Now, when you say moving higher based on the strength  
12:44:28 3 of the booked position, you wanted Mr. Wistisen to hear that  
12:44:31 4 United was probably increasing its prices because its sold  
12:44:35 5 position was strong, right?

12:44:36 6 A. That's correct.

12:44:36 7 Q. And you wanted Mr. Speece to convey to Mr. Wistisen  
12:44:40 8 that there was pressure to increase United's prices giving  
12:44:44 9 the strong sold position, right?

12:44:45 10 A. I would say it differently, we had contemplating  
12:44:49 11 moving the prices up because of the strength of the sold  
12:44:51 12 position.

12:44:52 13 Q. You were contemplating increasing prices in the  
12:44:55 14 future and that's what you wanted Mr. Wistisen to hear?

12:44:58 15 A. Well, yeah.

12:44:59 16 MR. HANNA: No further questions.

12:45:01 17 THE COURT: Thank you.

12:45:03 18 Ms. Giordano.

12:45:10 19 MS. GIORDANO: Jennifer Giordano on behalf of  
12:45:17 20 the defendants.

12:45:17 21 THE COURT: Thank you. Can you make sure you  
12:45:19 22 speak up?

12:45:19 23 MS. GIORDANO: Is this better? No, is this  
12:45:22 24 better?

12:45:23 25 THE COURT: Yes.

Swart - cross

12:45:24 1 MS. GIORDANO: I got the right microphone.

12:45:26 2 Great.

12:45:26 3 CROSS-EXAMINATION

12:45:26 4 BY MS. GIORDANO:

12:45:27 5 Q. Mr. Swart, how long have you worked at United?

12:45:29 6 A. I have been with the enterprise forty years.

12:45:31 7 Q. Does that mean you have been selling sugar for about  
12:45:34 8 forty years?

12:45:34 9 A. Yes, ma'am.

12:45:35 10 Q. And what responsibilities do you have for setting the  
12:45:39 11 price at which United sells sugar to industrial customers,  
12:45:43 12 like General Mills, for example, grocers?

12:45:46 13 A. I have the pricing authority to enter into those  
12:45:49 14 contracts.

12:45:49 15 Q. Do you have any responsibilities for sales to  
12:45:53 16 United's retail customers like grocers?

12:45:56 17 A. No, I don't.

12:45:57 18 Q. Who at United is responsible for that?

12:46:01 19 A. Dave Salsa.

12:46:03 20 Q. How does the job of selling sugar to industrial  
12:46:07 21 customers like you're responsible for compare to the job of  
12:46:10 22 selling sugar to retail customers like grocers?

12:46:13 23 A. Well, the selling process is different and frankly I  
12:46:17 24 don't know a lot about that side of the business.

12:46:21 25 Q. What percentage of United's business is sales to

Swart - cross

12:46:26 1 industrial customers as compared to retail customers?

12:46:28 2 A. It varies a little bit from one year to the next, but  
12:46:32 3 typically it's 90 percent.

12:46:34 4 Q. How does the sales process to an industrial customer  
12:46:37 5 typically start?

12:46:38 6 A. It starts with requests for a proposal or a request  
12:46:42 7 for a quote.

12:46:45 8 Q. Do you typically know who you're bidding against for  
12:46:48 9 any particular request for proposal or request for quote?

12:46:52 10 A. No, customers send those RFQs or RFPs out to a  
12:46:58 11 variety of suppliers, they treat that information pretty  
12:47:02 12 confidentiality and we rarely understand who is in.

12:47:06 13 Q. Do you sometimes have some indication who you might  
12:47:09 14 be bidding against for particular customers?

12:47:11 15 A. Yeah, sometimes we do, and over the course of a  
12:47:14 16 number of years, from time to time, it will come out in  
12:47:17 17 conversation who might be serving one location or another.

12:47:21 18 Q. You were asked a number of questions about exhibit  
12:47:24 19 PTX 452. That was the regional markets overview  
12:47:32 20 presentation from March of 2020. Do you recall those  
12:47:34 21 questions?

12:47:35 22 A. I do.

12:47:36 23 Q. Can we put that up on the screen, please, this is not  
12:47:39 24 confidential at page 222445. Thank you.

12:47:42 25 Mr. Swart, what was the purpose of this regional

Swart - cross

12:47:48 1 markets overview?

12:47:49 2 A. Well, the members of United had made decisions to  
12:47:54 3 increase the amount of sugar that they were going to  
12:47:57 4 produce, and so our job at United is first and foremost to  
12:48:02 5 make sure that we get all the sugar sold, so this -- at this  
12:48:06 6 regional markets overview we provided some background  
12:48:09 7 information, and we looked at the most profitable ways for  
12:48:14 8 us to be able to market that additional production. And we  
12:48:18 9 made recommendations for a 50-pound bag line at Clewiston  
12:48:24 10 and we also looked at liquid sugar in the Chicago area.

12:48:29 11 Q. Why were you discussing that 50-pound bag extension  
12:48:33 12 in Florida at the time?

12:48:35 13 A. Well, 50-pound bags are a profitable item for us.  
12:48:40 14 The packaging upcharge that we get in the marketplace is  
12:48:45 15 higher than the cost of producing those 50-pound bags. So  
12:48:51 16 all other things being equal, 50-pound bags tend to be a  
12:48:55 17 little bit higher margin for us.

12:48:57 18 Q. What does that mean for United's margins or for its  
12:49:03 19 members?

12:49:03 20 A. Well, it's a little bit higher net selling price on  
12:49:07 21 50-pound bags than on bulk.

12:49:10 22 Q. We talked about United's members a few times here, I  
12:49:13 23 think you mentioned it earlier, but just who are United's  
12:49:17 24 members?

12:49:17 25 A. They are American Crystal Sugar headquartered in



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12:49:21 1 Morgan, Minnesota. Minn-Dak Farmers Cooperative is  
12:49:25 2 headquartered in Wahpeton, North Dakota. Wyoming Sugar is  
12:49:30 3 in Worland, Wyoming. And, of course, US Sugar in Clewiston,  
12:49:35 4 Florida.

12:49:35 5 Q. Who determines how much sugar each of those four  
12:49:39 6 members produces each year?

12:49:41 7 A. The individual members make their own production  
12:49:44 8 decisions.

12:49:44 9 Q. What role does United have in that?

12:49:47 10 A. We have no role in determining how much sugar they  
12:49:49 11 produce.

12:49:50 12 Q. What are United's responsibilities with respect to  
12:49:53 13 the refined sugar that each of its four members produces?

12:49:57 14 A. Well, first and foremost it's our job to make sure  
12:50:00 15 that we get that sugar sold and shipped each and every year.  
12:50:04 16 And, of course, we're also focused on trying to generate the  
12:50:08 17 highest net selling price that we can.

12:50:12 18 Q. Does United have the option of just selling some of  
12:50:17 19 the sugar that its members produced and not selling other  
12:50:21 20 quantities or holding or storing other quantities?

12:50:24 21 A. No, not getting all the sugar sold would be  
12:50:27 22 unsatisfactory to the members.

12:50:28 23 Q. We talked about the term net selling price a few  
12:50:31 24 times today. Can you explain what that is?

12:50:33 25 A. Yeah, that's the revenue that we get from a sale,

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12:50:38 1 from any customer, and from that we subtract discounts and  
12:50:42 2 allowances, we subtract freight costs, packaging,  
12:50:48 3 warehousing costs and our own overhead, so it's what we  
12:50:52 4 return to our owners as a result of the sale.

12:50:55 5 Q. And is owner another term you use for your four  
12:50:58 6 members?

12:50:59 7 A. Yes.

12:50:59 8 Q. Conceptually, so we make sure we're clear, what is  
12:51:04 9 the difference between the return to your owners, to your  
12:51:06 10 members and the price that the customer pays?

12:51:06 11 A. Well, it's the price, the net selling price is the  
12:51:12 12 price the customer pays, minus all of the expenses  
12:51:15 13 associated with making that sale.

12:51:18 14 Q. Does United seek to increase the return to its  
12:51:23 15 members without necessarily increasing the price that the  
12:51:26 16 customer is paying?

12:51:27 17 A. Yeah, absolutely, that was the focus of the 50-pound  
12:51:32 18 bag recommendation in Clewiston, we could generate a little  
12:51:36 19 bit higher net selling price by installing that 50-pound bag  
12:51:40 20 line without assuming any change in our prices, because we  
12:51:42 21 produce those products efficiently.

12:51:42 22 Q. Does raising the price to your customers, does that  
12:51:52 23 necessarily mean that United is going to get a higher net  
12:51:54 24 selling price or more money for its members?

12:51:54 25 A. No. You know, a lot of it has to do with selling and

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12:52:01 1 shipping efficiently, and chasing, you know, a few pennies  
12:52:07 2 higher on the delivered price, if that sugar is distributed  
12:52:11 3 inefficiently or it's in a package that we don't make money  
12:52:16 4 on, it does not necessarily mean that the net selling price  
12:52:19 5 will be higher.

12:52:20 6 Q. Just to be clear, does United prioritize selling its  
12:52:24 7 sugar most efficiently or holding out for the highest price  
12:52:29 8 it can get from the customer?

12:52:31 9 A. No, we focus on selling and distributing efficiently.

12:52:35 10 Q. Focusing back on this regional markets overview that  
12:52:38 11 you were discussing earlier this morning, did any of the  
12:52:41 12 strategies, the regional strategies you were talking about,  
12:52:44 13 did any of those involve a plan to raise the price that the  
12:52:47 14 customer was going to pay?

12:52:48 15 A. No.

12:52:49 16 Q. So what were you trying to do?

12:52:51 17 A. What we were trying to figure out a way to sell more  
12:52:54 18 higher margin product.

12:52:56 19 Q. Now, the government asked you about a map, they  
12:53:00 20 showed you a map in this presentation. I want to start a  
12:53:03 21 little bit earlier than that. This is slide 19, before the  
12:53:06 22 map the government showed you, one page before it. Just for  
12:53:10 23 the record, it's Bates stamped 2447. What do the colors on  
12:53:13 24 this map show?

12:53:16 25 A. Those, it's the U.S. that is divided into USDA

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12:53:24 1 regions, the way USDA would define regions in the U.S.

12:53:29 2 Q. Just for the record, who is the USDA?

12:53:31 3 A. That's the Department of Agriculture. They're the  
12:53:34 4 governing body of the sweetener market in the US.

12:53:39 5 Q. If we click one more page to the next slide 20, 448  
12:53:46 6 for the record, this is the map the government showed you.  
12:53:49 7 What do the colors on this map, what's being conveyed here?

12:53:52 8 A. These are just groups of states that have the  
12:53:55 9 producing locations identified within them. And it was our  
12:54:00 10 assessment at a point in time of where those -- the states  
12:54:05 11 in which the producing locations would have freight  
12:54:09 12 advantage.

12:54:11 13 Q. In the many years that you have worked at United, how  
12:54:14 14 often have you seen United break up the country like this  
12:54:17 15 with the states in these particular colors?

12:54:20 16 A. Yeah, not ever before this. We used this map in a  
12:54:25 17 couple of presentations around that period of time. But we  
12:54:28 18 had never done this before and haven't done it since.

12:54:31 19 Q. What's the more typical way that United thinks or  
12:54:34 20 uses maps or what kind of a breakdown to you typically use?

12:54:40 21 A. Well, all of the demand that's reported by USDA  
12:54:43 22 regions, so those are the regions that we use when we  
12:54:46 23 typically analyze the demand flows.

12:54:50 24 Q. Now, what do the colors on this map mean to you in  
12:54:53 25 your sort of day-to-day responsibility of selling sugar?

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12:54:59 1 A. Well, they don't mean anything. And you know, I  
12:55:06 2 think if you look at the dark green states, those producing  
12:55:09 3 locations in Michigan, certainly Michigan can ship sugar to  
12:55:15 4 Chicago that's in the orange area, in fact less expensively  
12:55:19 5 than we can, Cargill and ASR, those two red dots near  
12:55:24 6 Louisiana have freight rates that allow them to access to  
12:55:29 7 the states that are identified as red. It just, it doesn't  
12:55:35 8 influence what we do in the normal course of business.

12:55:42 9 Q. Let's move to the very next slide in the presentation  
12:55:45 10 which is slide 21, for the record it's Bates stamped 449.  
12:55:49 11 What is this map showing?

12:55:51 12 A. This map tries to portray how sugar flows throughout  
12:55:57 13 the U.S. from producing regions, the production will find  
12:56:04 14 demand. So in the red state areas, the producing locations  
12:56:10 15 that are in that area actually ship sugar into the Midwest,  
12:56:14 16 they ship sugar up the eastern seaboard, the refiners that  
12:56:21 17 are near New Orleans, Louisiana ship sugar from those  
12:56:27 18 refineries into the states that are in red, they ship sugar  
12:56:32 19 into Chicago, they ship sugar up into the northeast.

12:56:35 20 We ship sugar from the Red River Valley and NSM  
12:56:42 21 ships sugar from Renville into the Gulf, the light green  
12:56:45 22 shaded areas and down into the red state areas and there is  
12:56:49 23 sugar produced as far away as the Pacific northwest that  
12:56:55 24 finds itself all the way across the country. I should  
12:56:59 25 mention that we know that there is sugar that's produced in

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12:57:02 1 that geography that also finds it way into the red state  
12:57:07 2 grouping.

12:57:08 3 Q. Can you explain why it is that there are these arrows  
12:57:12 4 all over this map with sugar flowing everywhere, why don't  
12:57:18 5 the producers just sell close to home, why don't in the  
12:57:22 6 yellow states they sell right into yellow states and keep  
12:57:26 7 all their sugar there?

12:57:27 8 A. That's a more efficient sale, but selling commodities  
12:57:32 9 is not just a matter -- it becomes a matter of what's  
12:57:36 10 available at a time. So an opportunity that might come up  
12:57:40 11 for one of those refiners in New Orleans to sell sugar in  
12:57:44 12 Chicago, if it fits their margin requirements, or if it  
12:57:48 13 meets their net selling price objectives, then they're  
12:57:52 14 likely to take that sale at that time. Holding sugar back  
12:57:56 15 to sell it close to home is just -- it's not a realistic  
12:58:00 16 strategy.

12:58:01 17 Q. I think you mentioned a few times that this map  
12:58:05 18 depicts where certain producers have something called a  
12:58:09 19 freight advantage, do you recall that?

12:58:09 20 A. I do.

12:58:10 21 Q. Does having a freight advantage mean that you're able  
12:58:14 22 to charge higher prices, for example to the customer in the  
12:58:18 23 red states?

12:58:19 24 A. No, not at all. Any attempt to raise the prices is  
12:58:23 25 going to attract volume, it's going to attract production

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12:58:27 1 from alternative places.

12:58:29 2 Q. So what is the benefit of having a freight advantage  
12:58:33 3 then?

12:58:33 4 A. Well, it's a more efficient sale but it doesn't allow  
12:58:40 5 you to increase the delivered price.

12:58:42 6 Q. When you say it's a more efficient sale but you can't  
12:58:47 7 raise the price to the customer what does it enable you to  
12:58:50 8 do?

12:58:51 9 A. It enables you to distribute it more efficiently, it  
12:58:54 10 provides for lower freight costs.

12:58:54 11 Q. Now, the government's theory in this case you  
12:59:00 12 understand is that if US Sugar acquires Imperial, United is  
12:59:05 13 going to have a freight advantage in those red states over  
12:59:10 14 all the other sugar producing competitors in the country and  
12:59:13 15 that's going to allow United, the seller of that sugar to  
12:59:18 16 raise price to customers that are in those red states. Do  
12:59:21 17 you understand that's the government's theory?

12:59:23 18 A. I do.

12:59:24 19 Q. What's your reaction to that as a person responsible  
12:59:26 20 for selling sugar for United?

12:59:28 21 A. That's not going to be able to happen because any  
12:59:31 22 attempt to raise prices, whether it be in the red state  
12:59:34 23 areas or anyplace else, is going to attract production from  
12:59:37 24 outside of that narrow geography. So an attempt to raise  
12:59:40 25 prices in Atlanta is going to attract more sugar from

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12:59:51 1 Cargill and ASR in the New Orleans area, it could attract  
12:59:55 2 more sugar from NSM, it could attract more sugar from  
13:00:01 3 Western, it could attract more sugar from Baltimore to North  
13:00:06 4 Carolina, as an example.

13:00:07 5 Q. If US Sugar acquires -- I mean, what is your  
13:00:10 6 understanding about how much additional sugar you as United  
13:00:15 7 might be responsible for selling?

13:00:16 8 A. I think we -- our estimates are that they produce  
13:00:20 9 between 12 and 15 million hundredweight of sugar per year,  
13:00:25 10 so that would be a 20, 25 percent increase in the amount of  
13:00:29 11 volume that we would have to sell.

13:00:31 12 Q. And because that additional volume is coming from one  
13:00:33 13 of your members, US Sugar, are you, United, will you be  
13:00:36 14 responsible for selling all of that sugar?

13:00:41 15 A. Responsible and obligated to sell it.

13:00:44 16 Q. If you as United have an additional 20 to 25 percent  
13:00:47 17 of sugar to sell, what does that mean for your ability to  
13:00:51 18 raise prices, frankly anywhere in the country, but certainly  
13:00:54 19 in these red states?

13:00:58 20 A. It's kind of simple economics, right, we're going to  
13:01:02 21 have 20 percent more sugar and it's going to be a difficult  
13:01:05 22 task to get it all sold. I don't see being able to raise  
13:01:10 23 the price.

13:01:12 24 Q. Does the cost of storing sugar, does that have any  
13:01:15 25 role in how United prices its sugar?



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13:01:19 1 A. It does. Storing sugar is very expensive. We built  
13:01:25 2 that Montgomery storage facility. It holds 1.3 million  
13:01:32 3 hundredweight. We spent \$45 million on that, and on the  
13:01:34 4 margin from time to time we have to put sugar into 2,500  
13:01:37 5 pound tote boxes and the cost is about \$3.50, \$4.00 a  
13:01:45 6 hundredweight, that's ten percent of the net selling price.  
13:01:48 7 Storing that bulk sugar is an economic disaster.

13:01:52 8 Q. You mentioned a few times if you did try to raise  
13:01:55 9 prices, sugar would flow in from some of your competitors.  
13:01:59 10 Who do you think of in particular when you think of who some  
13:02:02 11 of the more aggressive ones are?

13:02:05 12 A. Well, most price aggressive competitors of late have  
13:02:09 13 been Cargill coming out of that Gramercy, Louisiana refinery  
13:02:16 14 and NSM.

13:02:17 15 Q. Are you aware that Cargill has announced plans to  
13:02:21 16 increase the capacity at its refinery in Gramercy, Louisiana  
13:02:27 17 by as much as 25 percent?

13:02:28 18 A. I am.

13:02:29 19 Q. What was your reaction when you heard that?

13:02:32 20 A. Well, I, my reaction is my job is going to get a lot  
13:02:37 21 tougher.

13:02:38 22 Q. You mentioned Cargill and I think it was NSM as the  
13:02:42 23 two most aggressive competitors. What about Imperial?

13:02:47 24 A. They are in the mix. ASR is in the mix. There are  
13:02:52 25 places where we compete against CSC and Sucro Sourcing. So

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13:02:59 1 they're in the mix.

13:03:02 2 Q. The government alleges that if U.S. Sugar is allowed  
13:03:06 3 to buy Imperial, that after the transaction the only two  
13:03:09 4 major competitors that are going to be supplying customers  
13:03:14 5 in that red state are Domino and United. What's your  
13:03:18 6 reaction to that?

13:03:19 7 A. I think it's false. I think Cargill is already  
13:03:22 8 shipping sugar into that geography. NSM is already shipping  
13:03:28 9 sugar into that geography, there is sugar flowing from the  
13:03:34 10 Red River Valley that that geography.

13:03:37 11 Q. Does United have any intention of trying to raise  
13:03:41 12 prices anywhere in the United States based on the fact that  
13:03:43 13 US Sugar could own Imperial?

13:03:46 14 A. No.

13:03:47 15 Q. Now, you were also asked some questions in this  
13:03:52 16 document and in another document that was PTX 507 about  
13:03:55 17 something called United Chicago strategy with respect to  
13:04:00 18 distributors. Do you recall that?

13:04:01 19 A. I do.

13:04:01 20 Q. What is the Chicago strategy? What was it?

13:04:02 21 A. Well, we had several problems back in 13. We were  
13:04:13 22 handcuffed by poor rail service and bad weather conditions,  
13:04:17 23 so the Chicago strategy set out to allow us to build a more  
13:04:24 24 bulk capacity closer to the customers. That was purpose of  
13:04:25 25 building the dome, better serve customers, alleviate the

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13:04:33 1 hang ups with the rail line. And as a part of that  
13:04:38 2 strategy, we set out to sell more bagged sugar to small and  
13:04:42 3 medium sized customers.

13:04:45 4 Q. So what effects did the Chicago strategy, the  
13:04:49 5 strategy in Chicago, have in customers in that area, in  
13:04:53 6 terms of their options for bagged sugar?

13:04:55 7 A. So we were an additional solid option for a lot of  
13:04:59 8 those customers. We have had some success selling those  
13:05:03 9 small and medium size bag customers. And the ultimate  
13:05:07 10 weight of price to those users went down.

13:05:11 11 Q. Did United ever pursue any version of the Chicago  
13:05:15 12 strategy in the southeast?

13:05:20 13 A. No.

13:05:25 14 Q. If US Sugar were allowed to acquire Imperial, does  
13:05:30 15 United have any plans to stop selling sugar to distributors?

13:05:35 16 A. No.

13:05:39 17 Q. If United were to try to raise prices to distributors  
13:05:44 18 in the southeast in those red states we were looking at,  
13:05:48 19 what would happen?

13:05:52 20 A. Well, they would fill that need from somebody else.  
13:05:56 21 We've seen that in Chicago, Batory for example, previously  
13:05:59 22 bought quite a bit of sugar from us, we don't sell them much  
13:06:03 23 now but they have been able to replace those volumes from  
13:06:07 24 alternative sources of supply.

13:06:11 25 Q. How would you describe the nature of competition with

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13:06:10 1 distributors in the Chicago area today?

13:06:12 2 A. Well, they're intense competitors. They have made a  
13:06:17 3 living buying sugar from sellers at their weak point and we  
13:06:23 4 compete aggressively against them.

13:06:27 5 Q. Turning to another topic, the government showed you  
13:06:30 6 an e-mail from someone at United named I remember Eric  
13:06:36 7 Speece and it had to do with a communication that Mr. Speece  
13:06:40 8 was having with a person named Rich Wistisen. Do you recall  
13:06:44 9 that e-mail?

13:06:44 10 A. I do.

13:06:44 11 Q. Who is Rich Wistisen?

13:06:47 12 A. Rich Wistisen writes a monthly newsletter on sugar,  
13:06:54 13 he normally recasts the spot pricing information in there,  
13:06:59 14 but he's an analyst that writes a newsletter about the  
13:07:03 15 industry.

13:07:05 16 Q. Why did United or why does United share information  
13:07:09 17 about itself with Mr. Wistisen?

13:07:11 18 A. Well, we know he's going to share information and we  
13:07:15 19 want the information that gets shared to be accurate. It's  
13:07:19 20 the same thing that we're telling our customers every time  
13:07:23 21 the phone rings or every time there is an e-mail that needs  
13:07:27 22 to be responded to, but we see a value in having the  
13:07:31 23 information that he publishes be accurate.

13:07:35 24 Q. You mean the information in his monthly report?

13:07:38 25 A. That's correct.

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13:07:39 1 Q. That's an industry wide report?

13:07:41 2 A. It is.

13:07:42 3 Q. Why does United care whether the information in  
13:07:47 4 Mr. Wistisen's monthly report is accurate?

13:07:50 5 A. Well, it's widely read by customers. We also think  
13:07:53 6 that the USDA reads that. Reads other periodicals that  
13:07:59 7 write on the industry, like Sosland Milling & Baking News  
13:08:05 8 report, Jenkins, Frank Jenkins, JSG Commodities I think it  
13:08:12 9 is writes virtually a daily report tracking the industry.  
13:08:14 10 And it's read by all of the industry analysts and by USDA.  
13:08:21 11 We want what's in there to be accurate.

13:08:23 12 Q. All those different industry reports you mentioned,  
13:08:24 13 do those generally all have the same types of information,  
13:08:30 14 they report the same types of information?

13:08:32 15 A. Yes, typically, yes.

13:08:33 16 Q. What types of information did the United provide to  
13:08:37 17 Mr. Wistisen for his monthly report?

13:08:40 18 A. Well, we have made a habit of producing his -- of  
13:08:41 19 giving him kind of our spot prices at the moment. We might  
13:08:51 20 indicate our sold position from time to time. He'll ask  
13:08:52 21 questions about crop development or if we have any news  
13:08:52 22 about how recovery is going. Which is I guess it's how the  
13:09:02 23 recovery of sugar from slicing the sugar beets is going,  
13:09:10 24 kind of a barometer of how production is progressing.

13:09:14 25 Q. How often did United share this type of information

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13:09:18 1 with Mr. Wistisen?

13:09:20 2 A. I don't talk to him myself, but it's my belief that  
13:09:24 3 Eric was talking to him about once a month.

13:09:27 4 Q. You mentioned spot prices, I think. Are those  
13:09:31 5 sometimes called the list prices?

13:09:33 6 A. Yes.

13:09:34 7 Q. How much of United's sugar sales are sold on a spot  
13:09:41 8 basis, at spot prices versus other prices?

13:09:44 9 A. Yes. It's very small. We're a much more aggressive  
13:09:48 10 forward seller.

13:09:49 11 Q. Do customers have access to United spot prices?

13:09:54 12 A. Yes, that's -- those are the prices that get quoted  
13:09:57 13 any time anybody calls. They're published in the portal.  
13:10:01 14 They're readily available.

13:10:04 15 Q. You mentioned the portal. Is that a United website?

13:10:08 16 A. Well, yeah, it's a -- yeah, it's a portal, it's a  
13:10:14 17 customer relationship modeling tool.

13:10:19 18 Q. And if I go on there today, can you see United's spot  
13:10:23 19 prices?

13:10:24 20 A. Yes.

13:10:28 21 Q. Does United also share its spot prices and list  
13:10:32 22 prices with prospective customers?

13:10:33 23 A. Yes.

13:10:37 24 Q. You mentioned the concept of sold position. What is  
13:10:41 25 that?

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13:10:37 1 A. Well, it's just a percentage of how far along we are  
13:10:41 2 in getting -- gaining full commitment for all of the sugar  
13:10:47 3 that's being produced.

13:10:48 4 Q. Does United sometimes share its sold position with  
13:10:52 5 customers?

13:10:52 6 A. Yes, we do, freely.

13:10:54 7 Q. And why does that make sense, why would you do that?

13:10:58 8 A. Well, as the sold position approaches a hundred  
13:11:01 9 percent, we would have -- there would be a tendency to raise  
13:11:05 10 the prices, and customers in the name of good customer  
13:11:09 11 service, building good relationships, we would convey that  
13:11:13 12 sold position to inform the customer the prices might be  
13:11:17 13 going up and giving them an opportunity to buy before the  
13:11:20 14 price is advanced.

13:11:21 15 Q. Is it important for example for the USDA to know when  
13:11:24 16 United might be starting to sell out for decisions that USDA  
13:11:30 17 might make?

13:11:31 18 A. Yeah, it could be.

13:11:31 19 Q. Does United sometimes provide its sold position to  
13:11:37 20 prospective customers, too?

13:11:38 21 A. Yes, we do, it's information that is -- we use pretty  
13:11:42 22 freely.

13:11:42 23 Q. The specific exhibit the government showed you was  
13:11:47 24 from November of 2020, if you recall it, and they were  
13:11:50 25 asking you about your indication to Mr. Speece that you

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13:11:55 1 wanted to -- you wanted Mr. Wistisen to understand what your  
13:11:59 2 current spot prices were and that there was a possibility  
13:12:02 3 they might be going up. Do you recall that?

13:12:04 4 A. I do.

13:12:06 5 Q. Was United telling customers that exact same thing at  
13:12:10 6 that time in November 2020?

13:12:11 7 A. Yes, we were.

13:12:13 8 Q. And do the members of United's sales team typically  
13:12:17 9 warn customers and prospective customers when it's  
13:12:21 10 considering raising prices?

13:12:23 11 A. Yes, we do.

13:12:25 12 Q. Why does that make business sense?

13:12:27 13 A. Because it helps us drive some additional sales  
13:12:30 14 through the door to be honest with you, it helps get people  
13:12:34 15 off the fence.

13:12:35 16 Q. And things like crop yields, how the weather is doing  
13:12:39 17 on the harvest, how the beets are slicing, are those  
13:12:42 18 conversations you're having regularly with the customers?

13:12:44 19 A. Yeah, the inquiries come in on all of those topics,  
13:12:48 20 more frequently from sophisticated buyers but we share that  
13:12:52 21 information freely, it's just part of helping the customer  
13:12:56 22 stay informed about what's going on.

13:12:58 23 Q. Does United share any information, provide any  
13:13:02 24 information to Mr. Wistisen that it was not freely providing  
13:13:06 25 to customers at the time it was providing it to



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13:13:08 1 Mr. Wistisen?

13:13:09 2 A. No.

13:13:11 3 Q. As the person responsible for setting the price of  
13:13:14 4 sugar for industrial customers, did you use the information  
13:13:17 5 that Mr. Wistisen provided to Mr. Speece for any purpose in  
13:13:23 6 setting any particular customer price?

13:13:25 7 A. No, customer prices are unique, it's a unique  
13:13:32 8 negotiation.

13:13:35 9 Q. Is each one individualized?

13:13:37 10 A. Yes.

13:13:38 11 Q. When United provided information to Mr. Wistisen for  
13:13:43 12 his monthly report, were you trying to coordinate with  
13:13:46 13 Domino in some way?

13:13:47 14 A. No. No, there is no love lost between us and Domino.

13:13:51 15 Q. The government asked you a number of questions about  
13:13:56 16 a 2022 bid for Pepsi. Do you recall that?

13:13:59 17 A. I do.

13:14:00 18 Q. And I think they talked an awful lot about the  
13:14:05 19 Wytheville, Virginia plant, do you recall that?

13:14:07 20 A. They did.

13:14:07 21 Q. Is Wytheville, Virginia the only Pepsi plant United  
13:14:11 22 was bidding on for 2022?

13:14:13 23 A. No, as I recall it, there were -- I think there were  
13:14:17 24 between 110 and 125 line items in that RFQ. Some of them  
13:14:22 25 were duplicates so I think there were probably in the

Swart - cross

13:14:26 1 vicinity, conservatively there were 75 to 80 locations in  
13:14:32 2 that RFP.

13:14:33 3 Q. How does United approach an RFP like that with Pepsi  
13:14:38 4 that has so many plants, so many line items, is it plant by  
13:14:44 5 plant or do you look at the bid holistically?

13:14:47 6 A. No, it's about the totality of the deal. See what we  
13:14:52 7 care about is the 5.2 or 5 weight and the net selling price  
13:14:57 8 that you have spin out of the bottom right-hand corner of  
13:15:03 9 that spreadsheet. We allow Pepsi to determine what level  
13:15:09 10 they want to put those individual competitive discounts.

13:15:11 11 Q. And the government asked you a number of questions  
13:15:16 12 about sort of what he -- we went through one e-mail with  
13:15:21 13 Mr. Speece and then went from one number to another number  
13:15:26 14 and we won't talk about the numbers. Does it matter to you  
13:15:31 15 as United what particular number Pepsi decides to input for  
13:15:36 16 any plant in terms of what competitive discount they put on  
13:15:41 17 that chart?

13:15:47 18 A. No, as I said, I think it was supported in the  
13:15:52 19 e-mail, we increased the competitive discount across all of  
13:15:57 20 the locations in all of the volumes. And Pepsi then decides  
13:16:02 21 what it is, how it is they want to divide those dollars up  
13:16:07 22 among those individual use points.

13:16:12 23 Q. For 2022, did United win the business at that  
13:16:17 24 Wytheville, Virginia plant?

13:16:22 25 A. We did.

Swart - cross

13:16:00 1 Q. And what type of sugar does United supply into  
13:16:04 2 Virginia?

13:16:05 3 A. We took that business specifically to be able to ship  
13:16:08 4 beet sugar in there.

13:16:09 5 Q. And where does that beet sugar come from?

13:16:11 6 A. The Red River Valley.

13:16:13 7 Q. And what are those states again?

13:16:15 8 A. Minnesota and North Dakota.

13:16:17 9 Q. It's not coming out of Clewiston, Florida?

13:16:21 10 A. Some of it may have come out of Clewiston, I think we  
13:16:25 11 were a little long on cars at Clewiston as we entered into  
13:16:29 12 the new year, I think we shipped a few. But the  
13:16:33 13 overwhelming majority of that sugar will be supplied from  
13:16:37 14 the Red River Valley plants.

13:16:39 15 Q. Why does --

13:16:41 16 THE COURT: Do you want to take our lunch break?

13:16:43 17 Q. This is my last question.

13:16:44 18 Why does it make any sense to ship that beet  
13:16:48 19 sugar in from the Red River Valley all the way to --

13:16:50 20 A. Well, the producers in the Red River Valley are  
13:16:52 21 increasing their production, and this landing that spot was  
13:16:56 22 part of number one job which is to ensure that we get all of  
13:17:00 23 that sugar sold.

13:17:02 24 Q. Thank you.

13:17:04 25 THE COURT: All right. Let's take our lunch

Swart - redirect

13:17:07 1 break. We'll come back around 1:50.

13:17:57 2 (A luncheon recess was taken.)

13:48:32 3 THE COURT: All right. Please be seated. Let's  
13:53:16 4 continue.

13:53:18 5 MS. GIORDANO: Thank you, Your Honor. Ready to  
13:53:19 6 proceed? I have no more questions, Mr. Swart. Thank you.

13:53:26 7 THE COURT: Redirect.

13:53:27 8 REDIRECT EXAMINATION

13:53:29 9 BY MR. HANNA:

13:53:31 10 Q. Quick redirect, Your Honor. Brian Hanna. All right,  
13:53:35 11 Mr. Swart, your counsel asked some questions about  
13:53:40 12 industrial versus retail on your questions. Do you recall  
13:53:45 13 that?

13:53:45 14 A. Yes.

13:53:46 15 Q. And United produces or it sells retail products;  
13:53:50 16 right?

13:53:50 17 A. That's correct.

13:53:51 18 Q. United has the retail brand, Crystal Sugar, right?

13:53:54 19 A. That's correct.

13:53:56 20 Q. United also sells retail to private labels as well,  
13:54:00 21 correct?

13:54:02 22 A. That's correct.

13:54:03 23 Q. Can we look at PTX 452. It's already been admitted  
13:54:08 24 into evidence. This is the regional market overview. And I  
13:54:12 25 want to look at row or slide 34, the USC southeast strategy

Swart - redirect

13:54:24 1 slide again.

13:54:34 2 A. Okay.

13:54:36 3 Q. So the right-hand side for the southeast strategy  
13:54:39 4 includes the strategy for the consumer per retail sales for  
13:54:43 5 United, right?

13:54:47 6 A. Yes.

13:54:48 7 Q. And do you see at the top the strategy says focus on  
13:54:52 8 additional customer/lanes in the key markets for volume and  
13:54:58 9 consuming while maintaining premium NSPs and alignment with  
13:55:03 10 consumer sales strategic plan, do you see that?

13:55:05 11 A. I do.

13:55:06 12 Q. That was presented on the United board?

13:55:09 13 A. Correct.

13:55:10 14 Q. Do you see the needs below that?

13:55:12 15 A. I do.

13:55:12 16 Q. That's the recommended needs that the top management  
13:55:17 17 at United were recommending to implement this sales strategy  
13:55:21 18 for the southeast retail, correct?

13:55:24 19 A. That's correct.

13:55:24 20 Q. And bullet 1 underneath says additional full  
13:55:28 21 portfolio pack size capability, ten-pound bags and specialty  
13:55:32 22 for cane spec requirements desirable freight lanes without  
13:55:40 23 adding capacity to balanced market; do you see that?

13:55:42 24 A. I do see that, right.

13:55:44 25 Q. That was part of the plan?

Swart - redirect

13:55:45 1 A. That's what it says.

13:55:46 2 Q. That was part of the plan for consumer retail  
13:55:50 3 strategy in the southeast?

13:55:51 4 A. Yes, that's retail.

13:55:52 5 Q. And an additional part of the plan was to add sales  
13:55:56 6 managers to open up and add new customers for consumer  
13:55:59 7 retail, right?

13:56:00 8 A. Yes, that's what's on.

13:56:01 9 Q. That's the strategy for the southeast market, right?

13:56:05 10 A. Correct.

13:56:06 11 Q. Set that document aside now.

13:56:08 12 Now, when United sells 50-pound bags, it then  
13:56:15 13 tells the owner that's producing the sugar how many bags of  
13:56:19 14 50-pound bags of sugar to produce, right?

13:56:21 15 A. Well, it's not quite like that. The bag lines run.  
13:56:29 16 We don't -- we're not really giving them daily instructions  
13:56:31 17 about how much sugar to put into a 50-pound bag. They fire  
13:56:37 18 the lines up early in processing campaign and they continue  
13:56:41 19 to run for months.

13:56:42 20 Q. Based on how many -- how much sale --

13:56:49 21 A. Yeah, anticipated sales over the course of the year.

13:56:52 22 Q. And United provides the owners on a weekly basis how  
13:56:59 23 much sugar in 50-pound bags United committed to sell, right?

13:57:05 24 A. Well, I think it happens at a higher level than that.  
13:57:11 25 We forecast demand monthly, I don't think -- I don't know

Swart - redirect

13:57:15 1 that there is any weekly communication about what to do with  
13:57:18 2 the bag lines.

13:57:20 3 Q. Now, your counsel asked you some questions about  
13:57:25 4 Wytheville, Virginia facility do you recall that?

13:57:28 5 A. Yes.

13:57:29 6 Q. And they asked you some questions about Pepsi United  
13:57:33 7 delivering beet sugar from the Red River Valley to the  
13:57:37 8 Wytheville location, do you recall that?

13:57:38 9 A. Yes.

13:57:38 10 Q. You recall when I asked you questions, you testified  
13:57:41 11 that United was actually pricing that sugar from the  
13:57:45 12 Clewiston refinery, right?

13:57:47 13 A. That's correct.

13:57:48 14 Q. Pepsi is paying as if you're delivering that sugar  
13:57:52 15 from Clewiston, right?

13:57:53 16 A. That's the pricing convention that we use, yes.

13:57:56 17 Q. Now, you also had some questions from your counsel  
13:58:00 18 about customer portal, do you recall that?

13:58:03 19 A. Yes.

13:58:03 20 Q. I think she said, she asked you could just go on to  
13:58:06 21 the portal and access United's pricing, do you recall that?

13:58:11 22 A. Yes, I do.

13:58:12 23 Q. Now, your counsel couldn't actually go on to the  
13:58:16 24 portal and access that pricing right?

13:58:18 25 A. Not without gaining previous access, that's right.

Swart - redirect

13:58:21 1 Q. And the folks that have previous access of the portal  
13:58:27 2 that can see your pricing is actual current customers of  
13:58:30 3 United, right?

13:58:31 4 A. Pardon?

13:58:32 5 Q. Only your current customers can access the portals to  
13:58:36 6 see your current pricing, right?

13:58:38 7 A. That's true, yes.

13:58:39 8 Q. Your competitors can't go on the portal and see your  
13:58:43 9 pricing right?

13:58:44 10 A. No, they cannot.

13:58:51 11 MR. HANNA: No further questions, Your Honor.

13:58:53 12 THE COURT: All right. Thank you. Thank you,  
13:58:56 13 sir. You are excused.

13:58:57 14 What's next?

13:59:01 15 MR. SANDROCK: Good afternoon, Your Honor. Ryan  
13:59:07 16 Sandrock from the United States of American. We will  
13:59:11 17 proceed with our next witness.

13:59:11 18 THE COURT: Yes.

13:59:13 19 MR. SANDROCK: Your Honor, the United States  
13:59:14 20 calls Steven Hanson, United's products director.

13:59:32 21 COURT CLERK: Please raise your right hand.  
13:59:42 22 Please state and spell your full name.

13:59:45 23 THE WITNESS: Steven Hanson. S-T-E-V-E-N,  
13:59:51 24 H-A-N-S-O-N.

13:59:54 25 STEVEN HANSON, having been duly sworn was



Hanson - direct

13:59:56 1 **examined and testified as follows:**

13:59:56 2 **DIRECT EXAMINATION**

13:59:56 3 **BY MR. SANDROCK:**

13:59:59 4 Q. Good afternoon, Mr. Hanson.

14:00:01 5 A. Good afternoon.

14:00:01 6 Q. You should have a binder in front of you and you  
14:00:04 7 don't need to look at it now, I'll direct it to you a couple  
14:00:06 8 of times during the examination, it has some exhibits and a  
14:00:10 9 copy of your deposition as well.

14:00:11 10 Can you please state your name for the record,  
14:00:15 11 Mr. Hanson?

14:00:15 12 A. Stephen Hanson.

14:00:16 13 Q. And your currently employed by United Sugars,  
14:00:19 14 correct?

14:00:20 15 A. I am.

14:00:21 16 Q. You have been at United for about twenty years,  
14:00:24 17 correct?

14:00:24 18 A. Pretty close, yes.

14:00:26 19 Q. And your current position is, in fact, titled  
14:00:29 20 Director of Industrial Products Bargaining?

14:00:31 21 A. It is.

14:00:32 22 Q. One of your activities at United is market analysis,  
14:00:35 23 correct?

14:00:36 24 A. Yes.

14:00:37 25 Q. And United has a software program called the portal

Hanson - direct

14:00:40 1 that United uses for market analysis?

14:00:42 2 A. Yes.

14:00:42 3 Q. And you manage the portal?

14:00:45 4 A. I do.

14:00:46 5 Q. The portal can identify the most profitability set of  
14:00:51 6 net selling price opportunities correct?

14:00:52 7 A. That's one of its functions.

14:00:54 8 Q. And freight costs are an input in United's modeling,  
14:00:58 9 right?

14:00:58 10 A. One of them, yes.

14:00:58 11 Q. And freight costs are used in the portal?

14:01:01 12 A. They are.

14:01:01 13 Q. And freight costs vary, can vary by Zip code,  
14:01:07 14 correct?

14:01:07 15 A. They can.

14:01:08 16 Q. And the portal takes into account driven differences  
14:01:13 17 in freight cost by zip code, correct?

14:01:15 18 A. They do.

14:01:16 19 Q. And the portal also has something called a  
14:01:20 20 competitive freight application, correct?

14:01:21 21 A. That's correct.

14:01:21 22 Q. And the competitive freight application is an  
14:01:25 23 estimate of the competitor's freight costs from a certain  
14:01:29 24 Zip code?

14:01:30 25 A. From an origin to and from a Zip code, yes.

Hanson - direct

14:01:35 1 Q. So it takes into account the to and from Zip code  
14:01:40 2 that your competitors would ship from?

14:01:43 3 A. Yes.

14:01:44 4 Q. And Mr. Hanson, please turn to PTX 481 in your  
14:01:50 5 binder. There is an e-mail and a slip sheet for an Excel  
14:01:55 6 attachment. We show you the attachment, we will put it on  
14:01:58 7 the screen in front of you have as a native. Do you have  
14:02:02 8 that in front of you, Mr. Hanson?

14:02:04 9 A. I do.

14:02:05 10 Q. And this is an e-mail you sent to Steve Hines;  
14:02:11 11 correct?

14:02:11 12 A. It is.

14:02:14 13 MR. SANDROCK: Your Honor, there are no  
14:02:15 14 outstanding objections to PTX 481 and the United States  
14:02:19 15 moves to admit it into evidence.

14:02:21 16 MR. BUTERMAN: No objection.

14:02:23 17 THE COURT: It's admitted.

14:02:24 18 MR. SANDROCK: Thank you, Your Honor.

14:02:24 19 (PTX Exhibit No. 481 was admitted into  
14:02:24 20 evidence.)

14:02:24 21 BY MR. SANDROCK:

14:02:22 22 Q. Mr. Hines is United Sugars vice-president of  
14:02:23 23 strategy, correct?

14:02:24 24 A. That's correct.

14:02:30 25 Q. And Mr. Hines at some point asked you for a synergy

Hanson - direct

14:02:34 1 analysis of the transaction that is at issue in this case,  
14:02:37 2 right?

14:02:38 3 A. I believe so.

14:02:40 4 Q. And this document might have been provided to him as  
14:02:43 5 part of that analysis; correct?

14:02:44 6 A. It might have.

14:02:46 7 Q. This list identifies some locations utilized in your  
14:02:51 8 competitive freight application, correct?

14:02:53 9 A. That's correct.

14:02:53 10 Q. And the third location listed on here is Port  
14:02:54 11 Wentworth, that is Imperial's facility in Port Wentworth,  
14:03:04 12 Georgia, correct?

14:03:05 13 A. That's correct.

14:03:06 14 Q. And the fourth location listed in here is Clewiston,  
14:03:08 15 that's the US Sugar facility in Clewiston, Florida, correct?

14:03:13 16 A. That's correct.

14:03:13 17 Q. And both Clewiston and Port Wentworth are USDA  
14:03:19 18 reporters correct?

14:03:20 19 A. They are.

14:03:20 20 Q. And USDA reporters are the refiners that are required  
14:03:24 21 to report volumes to USDA, correct?

14:03:27 22 A. That's correct.

14:03:27 23 Q. And Mr. Hanson, we will turn to the spreadsheet.  
14:03:32 24 Ms. Martinez if we could put up the spreadsheet in native  
14:03:32 25 that is attached PTX. I'm sorry, this is marked

Hanson - direct

14:03:42 1 confidential, I believe, counsel.

14:03:47 2 So Your Honor, I don't think we can show it on a  
14:03:50 3 public screen. But we could have it on the screen before  
14:03:55 4 Mr. Hanson.

14:04:01 5 Do you see it, Mr. Hanson?

14:04:02 6 A. I do.

14:04:04 7 Q. And this it's --

14:04:06 8 THE COURT: Mine just has the native, it's not  
14:04:09 9 on there yet. Okay. Tell me what number this is again  
14:04:11 10 because I can't see that.

14:04:14 11 MR. SANDROCK: It is PTX 481, Your Honor. Do  
14:04:21 12 you have it, Your Honor?

14:04:24 13 THE COURT: No. Hold on. Okay. All right.

14:04:24 14 BY MR. SANDROCK:

14:04:31 15 Q. Mr. Hanson, you prepared this spreadsheet, correct?

14:04:31 16 A. I did.

14:04:41 17 Q. And this is an output of the competitive freight  
14:04:43 18 application, correct?

14:04:43 19 A. I believe so.

14:04:44 20 Q. And this spreadsheet had columns for freight costs;  
14:04:46 21 correct?

14:04:46 22 A. Yes.

14:04:50 23 Q. And we can take that down.

14:04:52 24 And Mr. Hanson, you're modeling also helps  
14:05:00 25 analyze the product mix for a particular location; correct?

Hanson - direct

14:05:06 1 A. It includes the product mission for a certain  
14:05:09 2 location, yes.

14:05:09 3 Q. And Mr. Hanson, please turn to PTX 380 in your  
14:05:16 4 binder. And PTX 380 is an August 17, 2018, appointment  
14:05:24 5 invitation for Mr. Hines to you and others with the subject  
14:05:27 6 SE product mix status and next steps. Do you have that in  
14:05:32 7 front of you?

14:05:33 8 A. I do.

14:05:34 9 MR. SANDROCK: And, Your Honor, there are no  
14:05:36 10 outstanding objections to PTX 380. And we request to move  
14:05:40 11 it into evidence.

14:05:40 12 MR. BUTERMAN: No objection.

14:05:41 13 THE COURT: Thank you. It's admitted.

14:05:41 14 (PTX Exhibit No. 380 was admitted into  
14:05:45 15 evidence.)

14:05:45 16 MR. SANDROCK: Thank you, Your Honor.

14:05:45 17 BY MR. SANDROCK:

14:05:46 18 Q. And your understanding is SE in the subject line  
14:05:49 19 refers to the southeast?

14:05:50 20 A. I believe so, yes.

14:05:52 21 Q. And SE could also mean Clewiston because United  
14:05:52 22 conflates the southeast and Clewiston product mix, correct?

14:06:03 23 A. Yes, that's correct.

14:06:05 24 Q. And your understanding is Mr. Hines was asking the  
14:06:10 25 team to get together to talk about the potential

Hanson - direct

14:06:13 1 contribution of a base case facility?

14:06:16 2 A. Yes, it looks like that is the case.

14:06:18 3 Q. And if you look at the first bullet there, it says  
14:06:22 4 using the 40-acre site adjacent to Clewiston's property,  
14:06:26 5 that was the base case facility; correct?

14:06:33 6 A. I believe so.

14:06:35 7 Q. And Mr. Hines -- sorry?

14:06:37 8 A. I believe so.

14:06:40 9 Q. And Mr. Hines says that United should attack the  
14:06:44 10 market like Chicago. You understood that to be a reference  
14:06:47 11 to the Chicago strategy?

14:06:49 12 A. We do have a Chicago strategy, yes.

14:06:51 13 Q. And you understood attack the market like Chicago to  
14:06:54 14 be a reference to that strategy?

14:06:56 15 A. I don't know about attack, but there is a reference  
14:07:00 16 to the Chicago strategy, yes.

14:07:04 17 Q. And attack the market like Chicago, is that reference  
14:07:07 18 to the Chicago strategy?

14:07:11 19 A. Yes.

14:07:12 20 Q. And the Chicago strategy was a plan to ship bagged  
14:07:16 21 product to small customers directly rather than using  
14:07:20 22 distributors correct?

14:07:22 23 A. Yes.

14:07:24 24 Q. And you used the terms distributors and resellers  
14:07:27 25 interchangeably, correct?

Hanson - direct

14:07:26 1 A. Frequently, yes.

14:07:27 2 Q. And you understood the reference to market in the  
14:07:31 3 attack the market bullet to refer to the area around  
14:07:36 4 Clewiston; correct?

14:07:39 5 A. Yeah. I mean, that's -- yes.

14:07:42 6 Q. So that e-mail was from -- that invite was from 2018.  
14:07:49 7 Let's move ahead to 2019. In 2019, Mr. Hanson, you  
14:07:55 8 continued working with Mr. Hines on a model that included  
14:07:59 9 adding additional capacity in Clewiston; correct?

14:08:02 10 A. That's correct.

14:08:03 11 Q. And if you could please turn to PTX 483 in your  
14:08:09 12 binder, Mr. Hanson. So this is an e-mail and a slip sheet  
14:08:15 13 for the Excel attachment. Right now I would like you to  
14:08:21 14 please just look at the e-mail. Do you have that in front  
14:08:27 15 of you have?

14:08:24 16 A. I do.

14:08:25 17 Q. And you wrote this October 2019 e-mail; correct?

14:08:29 18 A. I did.

14:08:29 19 Q. And you put together the sales plan that was attached  
14:08:34 20 to this e-mail?

14:08:35 21 A. In conjunction with our sales team, that's correct.

14:08:40 22 MR. SANDROCK: And, Your Honor, there are no  
14:08:42 23 outstanding objections to PTX 483, the United States ask to  
14:08:45 24 move it into evidence.

14:08:45 25 MR. BUTERMAN: No objection.



Hanson - direct

14:08:47 1 THE COURT: Thank you. It's admitted.

14:08:49 2 (PTX Exhibit No. 483 was admitted into  
14:08:50 3 evidence.)

14:08:50 4 BY MR. SANDROCK:

14:08:51 5 Q. I said your e-mail but this e-mail expressed the  
14:08:54 6 views not just of yourself but of a collected group of  
14:08:59 7 United employees, correct?

14:09:00 8 A. That's correct.

14:09:00 9 Q. And you got feedback from multiple people before  
14:09:04 10 sending this e-mail, correct?

14:09:05 11 A. I did.

14:09:06 12 Q. And you ran the model and portal and landed on the  
14:09:09 13 plan set forth in point 1; correct?

14:09:11 14 A. Yes, that's correct.

14:09:13 15 Q. And part of the plan is set forth in 1D, and it  
14:09:18 16 included adding additional 50-pound granulated bags in  
14:09:21 17 Clewiston?

14:09:27 18 A. Yes.

14:09:28 19 Q. And the model you put together it took into account  
14:09:32 20 competitive responses, correct?

14:09:32 21 A. The model, the portal does not, but the overall plan  
14:09:42 22 did.

14:09:42 23 Q. So your plan took into account competitive responses,  
14:09:46 24 correct?

14:09:47 25 A. That's correct.

Hanson - direct

14:09:47 1 Q. And you wrote, "We paid particular attention to  
14:09:51 2 expected competitive pricing responses of a  
14:09:55 3 increasing/decreasing market shares."

14:09:57 4 A. Correct. I did write that.

14:09:59 5 Q. And you also wrote, "As with all plans of this  
14:10:02 6 nature, where we are looking at taking share from  
14:10:04 7 competitors, we need to factor into competitive responses."

14:10:08 8 A. Yes.

14:10:09 9 Q. And you provide an example of a competitive response,  
14:10:14 10 for example, adding bulk demand for the competitors is going  
14:10:19 11 to cost us in expected lower prices, correct?

14:10:24 12 A. It could, yes.

14:10:25 13 Q. Adding demand from competitors would cost United  
14:10:29 14 because it would lead to lower prices, right?

14:10:32 15 A. It's one of the factors that we were considering.

14:10:35 16 Q. And you gave the collective view there that the key  
14:10:39 17 was to stay balanced, correct?

14:10:42 18 A. Yes.

14:10:44 19 Q. And that was the collective view, right?

14:10:46 20 A. That was.

14:10:47 21 Q. And the collective view was balanced moves would  
14:10:51 22 initiate relatively smaller competitive reactions; right?

14:10:52 23 A. Yes, that's what it says, yes.

14:10:54 24 Q. So be balanced on taking market share to make sure  
14:11:00 25 that the price response wasn't too strong, right?

Hanson - direct

14:11:08 1 A. The expectation was to work with customers to not  
14:11:22 2 elicit too strong of a reaction because when you're taking  
14:11:28 3 share with customers or moving into selling new customers,  
14:11:32 4 sometimes price has to drop for us to convert that customer  
14:11:36 5 over.

14:11:36 6 Q. So stay balanced, so the price doesn't drop too much;  
14:11:40 7 right?

14:11:40 8 A. That's right.

14:11:42 9 Q. And let's move to the attached spreadsheet. And I  
14:11:47 10 think this should be on -- if we can get it on your screen.

14:11:53 11 MS. GARRETT: I apologize, Your Honor. I think  
14:11:55 12 we have the same issue as last time. This is PTX 483. I  
14:11:59 13 think actually we can show this on the public screen. I  
14:12:03 14 don't believe there is an objection to PTX --  
14:12:07 15 confidentiality issue. If we can go to the summary build  
14:12:11 16 out tab.

14:12:13 17 Q. Do you have that on the screen in front of you,  
14:12:17 18 Mr. Hanson?

14:12:17 19 A. Yeah, I can see it.

14:12:19 20 Q. And you put together this spreadsheet; correct?

14:12:22 21 A. I did.

14:12:22 22 Q. And line 8 there says install new 2.5 bag line in  
14:12:32 23 Clewiston. I skipped a couple of numbers. But do you see  
14:12:35 24 what I'm referring to, Mr. Hanson?

14:12:35 25 A. I do.

Hanson - direct

14:12:37 1 Q. That's the reference to this proposed new production  
14:12:42 2 line in Clewiston, right?

14:12:43 3 A. Yes.

14:12:44 4 Q. That's a reference to what was in 1D in the e-mail,  
14:12:47 5 right?

14:12:48 6 A. Right.

14:12:48 7 Q. And there is also a column labeled Market Share. Do  
14:12:53 8 you see that, Mr. Hanson?

14:12:54 9 A. I do.

14:12:56 10 Q. And then there is an asterisk and it says share of  
14:13:01 11 USC volume over USDA reporter data, that was the market  
14:13:06 12 share definition you used in this report; correct?

14:13:09 13 A. That is.

14:13:10 14 Q. And the numerator is share of US Sugar's volume --  
14:13:18 15 I'm sorry, the numerator is US Sugar's volume?

14:13:21 16 A. It's anticipate United Sugar's volume, this is the  
14:13:24 17 total.

14:13:24 18 Q. Got it. So this is the numerator is United's volume?

14:13:28 19 A. Yeah, USC.

14:13:30 20 Q. And the denominator is the USDA reporter data; is  
14:13:32 21 that right? And the USDA reporter data is just the data  
14:13:41 22 provided by USDA reporters, right?

14:13:42 23 A. That's correct.

14:13:45 24 Q. And USDA reporters do not include distributors,  
14:13:50 25 correct?

Hanson - direct

14:13:50 1 A. That's correct.

14:13:50 2 Q. And we can put that spreadsheet away.

14:13:56 3 Mr. Hanson, will you please turn to PTX 452 in  
14:14:02 4 your binder?

14:14:02 5 MR. SANDROCK: Your Honor, this exhibit has been  
14:14:04 6 admitted already. And if we could show it on the public  
14:14:17 7 screen. Thank you.

14:14:19 8 Q. You presented at a March 16, 2020, executive meeting,  
14:14:26 9 correct?

14:14:26 10 A. Yes.

14:14:27 11 Q. You were one of the people presenting, correct?

14:14:30 12 A. That's correct.

14:14:31 13 Q. And you gave a regional markets overview with the  
14:14:35 14 regional market identified as the Florida southeast market;  
14:14:39 15 correct?

14:14:40 16 A. That's correct, along with Dirk Swart.

14:14:43 17 Q. Could you please turn to slide 20, Mr. Hanson. You  
14:14:53 18 created this slide; correct?

14:14:55 19 A. I did.

14:14:56 20 Q. And the key, on the left shows Clewiston, South Bay,  
14:15:02 21 Imperial in red, correct?

14:15:03 22 A. Yes.

14:15:04 23 Q. And the three triangles in the red region corresponds  
14:15:07 24 to the USDA reporters in that area; correct?

14:15:12 25 A. That's correct.

Hanson - direct

- 14:15:12 1 Q. And the area in red shows the supplier backyards for  
14:15:17 2 those three facilities, correct?
- 14:15:20 3 A. They are the states surrounding those three  
14:15:23 4 reporters.
- 14:15:24 5 Q. And you labeled them as supplier backyards; correct?
- 14:15:28 6 A. For this presentation, yes.
- 14:15:30 7 Q. Can you move to slide 29, please, Mr. Hanson. You  
14:15:39 8 created this slide as well; correct?
- 14:15:41 9 A. I did.
- 14:15:42 10 Q. And these are the same states we saw in slide 20;  
14:15:48 11 correct?
- 14:15:48 12 A. They are.
- 14:15:50 13 Q. And the top left says Clewiston, South Bay and Seine,  
14:15:59 14 do you see that?
- 14:15:59 15 A. I do.
- 14:16:00 16 Q. And Seine is a reference to Imperial, correct?
- 14:16:03 17 A. Correct.
- 14:16:03 18 Q. And this slide also contains -- strike that.  
14:16:07 19 You were the author of the comments in the  
14:16:10 20 bottom left, correct?
- 14:16:14 21 A. I believe it was collectively, but yeah, I wrote the  
14:16:18 22 comments on the bottom.
- 14:16:19 23 Q. And one of the comments talks about freight rates by  
14:16:24 24 region; right? The second comment.
- 14:16:32 25 A. It says low freight rates create a deficit market,

Hanson - direct

14:16:37 1       **yes.**

14:16:37 2       **Q.       And you were comparing the freight rates in the**  
14:16:40 3       **southeast market to freight rates in other markets; correct?**

14:16:44 4       **A.       Yes.**

14:16:45 5       **Q.       And the data that United has shows, that freight**  
14:16:50 6       **rates are relatively low coming out of this market as**  
14:16:54 7       **compared to other areas; correct?**

14:16:56 8       **A.       On average.**

14:16:57 9       **Q.       The Clewiston rates are relatively lower per mile**  
14:17:03 10       **than Red River Valley rates?**

14:17:07 11       **A.       On average, yes.**

14:17:09 12       **Q.       Your conclusion on the slide was based on modeling**  
14:17:12 13       **you did in the portal, correct?**

14:17:14 14       **A.       That is correct.**

14:17:15 15       **Q.       And you also analyzed whether -- strike that.**

14:17:18 16               **You stated a conclusion about whether there were**  
14:17:21 17       **integrated distributor competitors in the southeast market;**  
14:17:24 18       **correct?**

14:17:26 19       **A.       Yes, I included that comment.**

14:17:28 20       **Q.       And the comment you made was that there were few**  
14:17:32 21       **integrated distributor competitors in the southeast market;**  
14:17:35 22       **correct?**

14:17:37 23       **A.       Yes.**

14:17:40 24       **Q.       Can you please turn to slide 31 of the same**  
14:17:42 25       **presentation, Mr. Hanson. You also worked on this slide;**

Hanson - direct

14:17:54 1

**correct?**

14:17:54 2

A. I did.

14:17:55 3

Q. And this slide also describes the southeast market;

14:18:00 4

**correct?**

14:18:00 5

A. Yes.

14:18:01 6

Q. And can you please turn to slide 34, Mr. Hanson. You

14:18:10 7

were also involved in preparing this slide; correct?

14:18:14 8

A. Yes, I was.

14:18:15 9

Q. And the southeast in the heading is the same

14:18:18 10

southeast market we saw in the map slides; correct?

14:18:23 11

A. Yes.

14:18:24 12

Q. And the Chicago strategy is the same Chicago strategy

14:18:29 13

we saw before in the attack the market bullet?

14:18:34 14

A. I think the word says similar and the focus there was

14:18:38 15

you're going to sell small and medium size customers as we

14:18:43 16

did in Chicago which is the priority of the strategy.

14:18:48 17

Q. It's the same Chicago strategy we saw in the other

14:18:52 18

document, right?

14:18:54 19

A. There are similarities.

14:18:58 20

Q. And it also says that there are means of additional

14:19:02 21

supply chain capacity, do you see that?

14:19:04 22

A. I do.

14:19:08 23

Q. So does the need section there mean that by

14:19:09 24

March 2020, United still had not expanded its production

14:19:14 25

lines in Clewiston to implement the Chicago strategy?



Hanson - direct

14:19:20 1 A. Yes, we hadn't by that point.

14:19:22 2 Q. Mr. Hanson, I would like you to turn to another  
14:19:26 3 exhibit, PTX 474. Do you have that, Mr. Hanson?

14:19:37 4 A. I do.

14:19:39 5 Q. The second e-mail there is an e-mail from you to  
14:19:46 6 Kevin Comb at McKeany-Flavell. Do you see that?

14:19:51 7 A. I do.

14:19:51 8 Q. And you wrote this e-mail in April 2021 asking for a  
14:19:57 9 slide on the map of sugar beet and sugarcane processors,  
14:20:02 10 correct?

14:20:02 11 A. Yes, that's what it says.

14:20:04 12 Q. And you said you had a use for that slide; correct?

14:20:10 13 A. I had a use for the image that was on the slide.

14:20:14 14 Q. And you had just attended a McKeany-Flavell seminar  
14:20:21 15 where you saw this slide; correct?

14:20:24 16 A. That's correct.

14:20:25 17 Q. And the document attached to this e-mail is what  
14:20:31 18 Mr. Comb sent to you?

14:20:34 19 A. Yes.

14:20:36 20 MR. SANDROCK: And Your Honor, the United States  
14:20:38 21 moves to admit PTX 474 into evidence.

14:20:41 22 MR. BUTERMAN: No objection.

14:20:42 23 THE COURT: Thank you. It's admitted.

14:20:44 24 (PTX Exhibit No. 474 was admitted into  
14:20:45 25 evidence.)

Hanson - direct

14:20:45 1 BY MR. SANDROCK:

14:20:46 2 Q. If you could turn, look at the slide, Mr. Hanson?

14:20:53 3 A. I am.

14:20:55 4 Q. Do you see the circle in Florida and Georgia?

14:21:00 5 A. Yes, I do.

14:21:02 6 Q. And that circle in Florida and Georgia is a portion

14:21:07 7 of what we saw in the red region in the map slides that you

14:21:11 8 created, correct?

14:21:14 9 A. Looks like it's within that region, yes.

14:21:17 10 Q. And the -- this map shows the same three USDA

14:21:24 11 reporters that we saw on your map; correct?

14:21:34 12 A. On the initial map, yes.

14:21:36 13 Q. And the only difference is that this shows the

14:21:43 14 Savannah facility and the Clewiston facility both being

14:21:47 15 controlled by United, correct?

14:21:52 16 A. It appears so.

14:21:54 17 Q. Because this slide models --

14:21:56 18 A. It's hard to see.

14:21:57 19 Q. The colors are hard to see?

14:21:59 20 A. Yeah.

14:22:00 21 Q. This slide models a post acquisition United; correct?

14:22:10 22 A. Yeah, it looks like that.

14:22:12 23 Q. April 2021 was after the proposed acquisition had

14:22:17 24 been announced, right?

14:22:19 25 A. Right, I believe so.

Hanson - direct

14:22:21 1 Q. And the slide then also has conclusions about or  
14:22:26 2 statements about market share and consolidation of the  
14:22:30 3 southeast post acquisition, correct?

14:22:34 4 A. Yes.

14:22:35 5 Q. And do you see the reference to market share on this  
14:22:39 6 document?

14:22:40 7 A. I do.

14:22:43 8 Q. This would be a post acquisition market share to your  
14:22:47 9 understanding?

14:22:48 10 A. I don't know. Frankly I wasn't interested in that  
14:22:51 11 data. I was frankly only interested in the map.

14:22:51 12 Q. PTX 483 that we saw earlier, which had your analysis  
14:23:01 13 of the potential expansion in Clewiston, that also  
14:23:11 14 referenced mark share?

14:23:11 15 A. I believe so.

14:23:18 16 Q. That's where we saw the market share definition of  
14:23:21 17 USDA volume over USDA reported data?

14:23:21 18 A. Okay.

14:23:28 19 Q. This slide has market share information, right?

14:23:30 20 A. It does, but I can barely read the capacity number  
14:23:32 21 which is a different definition of market share.

14:23:40 22 Q. Now, United at some point after the acquisition was  
14:23:42 23 announced stopped publishing market share data; correct?

14:23:52 24 A. So United faced a force -- so I published a market  
14:24:00 25 report and in that market report we do have market share

Hanson - direct

14:24:04 1 data, and we had a force majeure event that happened  
14:24:09 2 slightly before that, and we removed the market share slides  
14:24:13 3 from that market report.

14:24:18 4 Q. So your testimony is that you stopped publishing  
14:24:22 5 market share data due to the force majeure?

14:24:25 6 A. That's correct.

14:24:26 7 Q. Mr. Hanson, could you please turn to PTX 367 in your  
14:24:33 8 binder. And you wrote this e-mail, correct?

14:24:44 9 A. I did.

14:24:46 10 MR. SANDROCK: And there are no objections to  
14:24:47 11 this exhibit. The United States moves to admit it, Your  
14:24:51 12 Honor.

14:24:51 13 MR. BUTERMAN: No objection.

14:24:52 14 THE COURT: All right. Thank you. It's  
14:24:53 15 admitted.

14:24:54 16 (PTX Exhibit No. 367 was admitted into  
14:24:55 17 evidence.)

14:24:55 18 BY MR. SANDROCK:

14:24:56 19 Q. So the top e-mail is from you to Lisa Malloy, right?

14:25:00 20 A. It is.

14:25:00 21 Q. It's from November 2021?

14:25:04 22 A. Yes.

14:25:04 23 Q. You wrote, "We are not publishing market share charts  
14:25:09 24 due to the ongoing Imperial acquisition."

14:25:12 25 Correct?

Hanson - cross

14:25:13 1 A. I did write that.

14:25:14 2 Q. You did not write anything about force majeure, did  
14:25:17 3 you?

14:25:17 4 A. I didn't.

14:25:29 5 MR. SANDROCK: Nothing further at this time for  
14:25:32 6 Mr. Hanson.

14:25:33 7 THE COURT: Thank you. Cross-exam.

14:25:38 8 CROSS-EXAMINATION

14:25:48 9 BY MR. BUTERMAN:

14:25:51 10 Q. Good afternoon, Mr. Hanson.

14:25:53 11 A. Good afternoon.

14:25:54 12 Q. Just picking up where counsel left off, when did  
14:25:59 13 United stop publishing that market share information?

14:26:05 14 A. I believe it was November of 2019.

14:26:07 15 Q. And what was the reason?

14:26:09 16 A. Because we had endured a force majeure event which  
14:26:13 17 dramatically changed our production and supply.

14:26:17 18 Q. Can you put you Exhibit 474 on the screen. Go to the  
14:26:31 19 slide of the presentation -- counsel was just asking you  
14:26:38 20 about this map. First of all, who is McKeany-Flavell?

14:26:42 21 A. They are a sugar analyst.

14:26:49 22 Q. So this wasn't put together by anyone at United, was  
14:26:53 23 it?

14:26:59 24 A. It was not.

14:26:59 25 Q. And counsel asked you questions about market share

Hanson - cross

14:27:00 1 information. Looking at this, can you tell me, is this  
14:27:05 2 looking at market shares from the perspective of southeast  
14:27:10 3 market or is this looking at this from a national market?

14:27:14 4 A. It looks like a national market.

14:27:19 5 Q. And by the way, if we look at those numbers on the  
14:27:21 6 right, can you see what that word says, the third column  
14:27:28 7 down, is that capacity?

14:27:33 8 A. The capacity is the third row or column, I'm sorry.

14:27:40 9 Q. Now, just taking a step back, sir, you're the  
14:27:43 10 director of industrial products marketing at United, right?

14:27:48 11 A. I am.

14:27:49 12 Q. And do you have responsibility for the consumer  
14:27:52 13 retail side of the business?

14:27:53 14 A. I don't.

14:27:54 15 Q. Is there someone else who has your responsibilities  
14:27:58 16 on the consumer side?

14:27:59 17 A. Yes.

14:28:00 18 Q. Who is that?

14:28:00 19 A. Dave Salsa.

14:28:03 20 Q. Why is it that Mr. Salsa has the responsibilities on  
14:28:06 21 the consumer side and you do not?

14:28:10 22 A. It's a different skill set, it's a different type of  
14:28:14 23 responsibility.

14:28:14 24 Q. Are you responsible for determining the price of  
14:28:16 25 sugar that any industrial customer pays?

Hanson - cross

14:28:19 1

A. I am not.

14:28:23 2

Q. If we could put up PTX 481, please. Now, counsel

14:28:36 3

asked you some questions about this document, the

14:28:40 4

competitive FOB rates that are here. Where did you obtain

14:28:48 5

the competitor FOB prices that are blacked out here?

14:28:53 6

A. I didn't obtain them, I inputted numbers that were

14:28:59 7

within my planning process.

14:29:03 8

Q. Are these actual competitive FOB prices?

14:29:06 9

A. No.

14:29:09 10

Q. Now, counsel also asked you questions about United's

14:29:15 11

use of the competitive freight rate application. Do you

14:29:18 12

recall that?

14:29:19 13

A. I do.

14:29:19 14

Q. What does United use the competitive freight rate

14:29:24 15

application for?

14:29:25 16

A. Primarily for our targeting and also for pricing

14:29:29 17

analysis purposes.

14:29:29 18

Q. Is freight cost the only factor that affects a

14:29:33 19

supplier's ability to compete?

14:29:34 20

A. No, there is many, that's just one factor.

14:29:36 21

Q. Does the competitive freight application include

14:29:39 22

freight costs for distributors?

14:29:41 23

A. It does.

14:29:41 24

Q. And does the competitive freight application include

14:29:45 25

every competitor in every possible routing option?

Hanson - cross

14:29:49 1 A. No, because ultimately that would be millions of  
14:29:52 2 rates, so we need to prioritize them down to a more  
14:29:56 3 manageable number.

14:29:57 4 Q. Let's put PTX 452 on the screen, please. And the  
14:30:07 5 government's counsel asked you questions about the slide  
14:30:27 6 ending in 448. Do you see that?

14:30:34 7 A. I do.

14:30:35 8 Q. Just taking a step back, what was the purpose of the  
14:30:37 9 regional markets overview presentation?

14:30:40 10 A. Ultimately we were looking at potentially putting in  
14:30:43 11 a new bag line in Clewiston.

14:30:45 12 Q. And why was United considering expanding its  
14:30:50 13 packaging capacity for bags in Clewiston?

14:30:52 14 A. Because we found that we make more money, we generate  
14:30:57 15 a higher NSP on bag product.

14:31:00 16 Q. NSP is?

14:31:01 17 A. Our bottom line.

14:31:04 18 Q. NSP is the delivered price per customer?

14:31:08 19 A. It is not.

14:31:11 20 Q. Now, the government asked you about this slide. I  
14:31:20 21 would like to back up to the slide beforehand. This one is  
14:31:27 22 entitled USDA demand. What do the colors on this map  
14:31:32 23 represent?

14:31:32 24 A. This is the demand by USDA region as reported in  
14:31:37 25 monthly USDA data.



Hanson - cross

14:31:41 1 Q. Now, if we go back to the slide that the government  
14:31:46 2 focused you on. Is this the way that United typically  
14:31:50 3 categorized the states?

14:31:51 4 A. No.

14:31:51 5 Q. In your seventeen years of working at United, how  
14:31:55 6 does United typically categorize states, if it does at all?

14:32:00 7 A. In the USDA regions.

14:32:02 8 Q. Turn to the next slide, which the government didn't  
14:32:05 9 show you. Can you tell us what this slide is showing?

14:32:08 10 A. This is industrial bulk movements. So as you can  
14:32:12 11 see, there is bulk, this is USDA data, bulk shipments moving  
14:32:17 12 generally from the west to the east.

14:32:20 13 Q. And what are the arrows, the red arrows moving out of  
14:32:24 14 that area indicating?

14:32:28 15 A. So there is two red arrows, both over bulk. One  
14:32:34 16 moving in bulk sugar moving from the south into the  
14:32:39 17 northeast and the other one into the Midwest.

14:32:42 18 Q. And what does that represent?

14:32:45 19 A. It represents suppliers shipping sugar up to  
14:32:50 20 customers in different geographies.

14:32:52 21 Q. There is also an orange arrow coming in and a yellow  
14:33:00 22 arrow coming in to those red states. Do you see those?

14:33:02 23 A. I do.

14:33:07 24 Q. What do those represent?

14:33:09 25 A. Shipments moving into that region from other regions,

Hanson - redirect

14:33:13 1 from the south region, the midwest region.

14:33:17 2 Q. And why were you putting those arrows moving in and  
14:33:23 3 out of the various different color sections?

14:33:28 4 A. To show that the market moves from one region to the  
14:33:33 5 next.

14:33:34 6 Q. If we look at the next slide. And we have arrows  
14:33:39 7 here as well. Is this depicting the same phenomenon of  
14:33:45 8 sugar moving throughout the country that you just testified  
14:33:48 9 to?

14:33:48 10 A. It does, but it's on bags and not bulk.

14:34:20 11 MR. BUTERMAN: That's all I have, Your Honor.

14:34:21 12 THE COURT: All right. Thank you.

14:34:30 13 MR. SANDROCK: Thank you, Your Honor, I'll be  
14:34:32 14 very brief.

14:34:33 15 REDIRECT EXAMINATION

14:34:33 16 BY MR. SANDROCK:

14:34:34 17 Q. Mr. Hanson, could you please look at PTX 474, the  
14:34:39 18 McKeany-Flavell slide. Do you have that in front of you?

14:34:41 19 A. I do.

14:34:42 20 Q. And distributors are not listed there for the market  
14:34:52 21 share calculation, are they?

14:34:52 22 A. Looks like you only included the reporters.

14:35:00 23 Q. And the market share definition in the spreadsheet  
14:35:04 24 that you created, only included the USDA reporters, correct?  
14:35:14 25 Remember we saw that denominator, USC volumes over USC

Hanson - redirect

14:35:20 1 reporters, you created that, right?

14:35:21 2 A. Yes, so we know the denominator with USDA data so  
14:35:26 3 it's easier to capture market share data when you have a  
14:35:30 4 known confident denominator, but we do know that there is  
14:35:34 5 additional sugar that is marketed.

14:35:36 6 Q. And could you turn back to PTX 481, please. This is  
14:35:42 7 the competitive freight application e-mail. Do you have  
14:35:47 8 that, Mr. Hanson?

14:35:48 9 A. I do.

14:35:49 10 Q. Distributors are not listed in that cover e-mail, are  
14:35:53 11 they?

14:35:53 12 A. They are. They're actually the bottom two lines,  
14:35:59 13 distributors are the primary importers of Mexican sugar and  
14:36:03 14 refined imports.

14:36:04 15 Q. You don't list any specific distributor in this  
14:36:08 16 e-mail, do you?

14:36:09 17 A. Not a specific one, because there is many.

14:36:12 18 MR. SANDROCK: No further questions.

14:36:14 19 THE COURT: All right. Thank you. All right.  
14:36:18 20 Anything else? Thank you, sir. You are excused.

14:36:22 21 What's next?

14:36:22 22 MR. HANNA: Your Honor, the United States calls  
14:36:25 23 the next witness.

14:36:26 24 THE COURT: Okay.

14:36:27 25 MR. HANNA: United States calls to the witness

J. Hines - direct

14:36:29 1 stand Jeana Hines who is an adverse witness. Jeana Hines is  
14:36:34 2 the vice-president of sales at Imperial Sugar.

14:36:40 3 THE COURT: Okay.

14:37:04 4 COURT CLERK: Please raise your right hand.  
14:37:11 5 Please state and spell your full name for the record.

14:37:17 6 THE WITNESS: Jeana Hensley Hines, J-E-A-N-A,  
14:37:24 7 H-E-N-S-L-E-Y, H-I-N-E-S.

14:37:28 8 JEANA HENSLEY HINES, having been duly sworn was  
14:37:31 9 examined and testified as follows:

14:37:34 10 MR. HANNA: May I proceed, Your Honor?

14:37:40 11 THE COURT: Please.

14:37:40 12 DIRECT EXAMINATION

14:37:40 13 BY MR. HANNA:

14:37:42 14 Q. Good afternoon, Ms. Hines.

14:37:43 15 A. Good afternoon.

14:37:44 16 Q. I handed you a binder on your way up there. I might  
14:37:49 17 refer to that during your testimony. I'll let you know when  
14:37:51 18 we turn to it.

14:37:52 19 A. Okay.

14:37:52 20 Q. Ms. Hines, you're the vice-president of sales and  
14:37:52 21 marketing for Imperial Sugar, right?

14:37:52 22 A. Yes.

14:37:52 23 Q. You have been vice-president of sales and marketing  
14:38:00 24 since 2011, right?

14:38:01 25 A. Yes.

J. Hines - direct

14:38:02 1 Q. And you're considered part of the senior management  
14:38:05 2 at Imperial, right?

14:38:06 3 A. Yes.

14:38:07 4 Q. You have management responsibilities for both  
14:38:11 5 industrial customers, distributors and retailers, right?

14:38:14 6 A. Yes. And --

14:38:17 7 THE COURT: Could you put the microphone  
14:38:19 8 somewhere near you. You're not coming through at all.

14:38:34 9 BY MR. HANNA:

14:38:39 10 Q. Ms. Hines, you report to the senior vice-president of  
14:38:42 11 sales, Patrick Henneberry, right?

14:38:44 12 A. Yes.

14:38:46 13 Q. And you work with both the Imperial CEO, Mike  
14:38:50 14 Gorrell, and Mr. Henneberry to make pricing decisions and  
14:38:54 15 negotiate with customers, right?

14:38:55 16 A. Yes.

14:38:57 17 Q. And one of your direct reports is Beth Smith who is a  
14:39:01 18 regional sales manager; right?

14:39:03 19 A. Yes.

14:39:05 20 Q. And Ms. Smith has responsibilities to cover sales to  
14:39:08 21 customers in southeastern United States, right?

14:39:10 22 A. Yes.

14:39:12 23 Q. The southeast region for Ms. Smith covers Alabama,  
14:39:16 24 Georgia, North Carolina, South Carolina, Kentucky and  
14:39:20 25 Tennessee, right?

J. Hines - direct

14:39:20 1 A. And also Florida.

14:39:22 2 Q. She also covers the Publix industrial sales in  
14:39:26 3 Florida, right?

14:39:27 4 A. Yes.

14:39:27 5 Q. The southeast region is the only region in the United  
14:39:30 6 States in which Imperial has a specific sales manager  
14:39:33 7 focusing on the region; right?

14:39:35 8 A. Yes.

14:39:35 9 Q. And as far as you recall, Ms. Hines, Imperial has  
14:39:39 10 always had a sales manager focusing on the southeast region,  
14:39:43 11 right?

14:39:43 12 A. Since I have been with the company, yes.

14:39:47 13 Q. And the customers that you directly manage are Pepsi,  
14:39:51 14 Costco, Mars and Hershey, is that right?

14:39:54 15 A. Yes.

14:39:55 16 Q. Hershey, Imperial has contracted to supply sugar to  
14:39:59 17 both the Hershey, Pennsylvania facility as well as the  
14:40:03 18 Stuarts Draft, Virginia facility?

14:40:07 19 A. Those are two of the three yes.

14:40:09 20 Q. And you competed for the Hershey, Stuarts Draft,  
14:40:13 21 Virginia facility in 2022 right?

14:40:16 22 A. We did bid on the location.

14:40:17 23 Q. And Imperial has been awarded volume to supply the  
14:40:21 24 Hershey Plant in Stuarts Draft, Virginia for the year 2022,  
14:40:24 25 right?

J. Hines - direct

14:40:25 1 A. Yes.

14:40:26 2 Q. And Imperial has supplied the Hershey plant in  
14:40:31 3 Stuarts Draft, Virginia for the past five years, right?

14:40:33 4 A. Yes.

14:40:33 5 Q. Let's talk a little bit about what Imperial does.  
14:40:36 6 Imperial produces various sizes packages of sugar ranging  
14:40:40 7 from two-pound bags to 50-pound bags, is that right?

14:40:43 8 A. Yes.

14:40:43 9 Q. Imperial also sells super sacks, right?

14:40:46 10 A. Yes.

14:40:47 11 Q. And you sometimes refer to super sacks as a tote,  
14:40:51 12 right?

14:40:51 13 A. Yes.

14:40:52 14 Q. Now, a tote or a super sack is a 2,000-pound bag.  
14:40:56 15 Right?

14:40:56 16 A. It can be 2,000 pounds up to 2,400 pounds.

14:40:59 17 Q. Now, Imperial's packaging facility at the refinery in  
14:41:06 18 Port Wentworth came online in 2009, is that right?

14:41:11 19 A. Yes.

14:41:12 20 Q. And you would agree that Imperial's packaging  
14:41:16 21 facility is state of the art, right?

14:41:17 22 A. Yes.

14:41:18 23 Q. Now, for Imperial's super sack business, you consider  
14:41:24 24 Imperial's core geography for those sales to cover, Alabama,  
14:41:28 25 Mississippi, Florida, Georgia, North Carolina, South

J. Hines - direct

14:41:33 1 Carolina, Kentucky and Tennessee, right?

14:41:35 2 A. I would also add Indiana and Illinois into that.

14:41:44 3 Q. You would consider those states that I just read off  
14:41:47 4 to you as your core geography in total?

14:41:51 5 A. Depends on the year, yes.

14:41:52 6 Q. So your core geography for the super sacks is,  
14:41:57 7 Alabama, Mississippi, Florida, Georgia, North Carolina,  
14:42:01 8 South Carolina, Kentucky and Tennessee, right?

14:42:04 9 A. It would be, depending on the year.

14:42:05 10 Q. And you refer to that area as being the core  
14:42:08 11 geography of the super sack business for Imperial, right?

14:42:12 12 A. It fluctuates depending on the year, at times,  
14:42:16 13 Indiana and Illinois are also in our core area.

14:42:23 14 Q. Now, the last three or four years Imperial has  
14:42:26 15 retained an industry consultant named McKeany-Flavell right?

14:42:31 16 A. We have used them as a broker, yes.

14:42:34 17 Q. And McKeany will sometimes give presentations on  
14:42:38 18 market information, is that right?

14:42:39 19 A. To customers, yes.

14:42:42 20 Q. You have been happy with McKeany's service to you,  
14:42:45 21 right?

14:42:50 22 A. As a broker, they have done a very good job for us.

14:42:53 23 Q. If you can turn to PTX 217 in your notebook. By  
14:43:01 24 agreement with your attorney we prepared a PDF of the  
14:43:05 25 PowerPoint presentation that we'll show you that I provided



J. Hines - direct

14:43:11 1 some page numbers on there. We have a version that is  
14:43:17 2 colored I think it will be easier for you to follow after  
14:43:21 3 the black and white version.

14:43:33 4 A. Yes.

14:43:34 5 Q. PTX 217 is a presentation that was prepared by  
14:43:38 6 McKeany-Flavell, is that right?

14:43:40 7 A. Yes, for Pepsi.

14:43:42 8 Q. And you reviewed this document before it went to  
14:43:45 9 Pepsi, though, right?

14:43:46 10 A. No, I did not.

14:43:47 11 Q. You reviewed the document after Pepsi sent it to you,  
14:43:52 12 right?

14:43:52 13 A. Pepsi sent it to me, yes, and then I looked at it.

14:43:55 14 Q. And they sent it to you before Pepsi came to Savannah  
14:44:00 15 Georgia for a plant tour, right?

14:44:03 16 A. Yes.

14:44:03 17 Q. This was prepared for a meeting between Pepsi and  
14:44:07 18 Imperial that took place in February of 2020, is that right?

14:44:09 19 A. Yes.

14:44:11 20 MR. HANNA: Your Honor, at this time the  
14:44:13 21 government moves to admit PTX 217. Any objections have been  
14:44:18 22 resolved.

14:44:19 23 THE COURT: Any objections, I would like you to  
14:44:21 24 say it on the report even though Mr. Hanna said it.

14:44:24 25 MR. ZACH: No objection.

J. Hines - direct

14:44:24 1 (PTX Exhibit No. 217 was admitted into  
14:44:35 2 evidence.)

14:44:35 3 BY MR. HANNA:

14:44:35 4 Q. This is a map showing the locations of sugar  
14:44:38 5 refineries in the United States, right?

14:44:39 6 A. Yes.

14:44:40 7 Q. And this map has a region of the United States that  
14:44:42 8 is shaded in red, do you see that?

14:44:44 9 A. Yes.

14:44:45 10 Q. And on this map that's shaded, that red shaded region  
14:44:49 11 is identified as the primary marketing region for Imperial,  
14:44:52 12 do you see that?

14:44:53 13 A. Yes, that's what McKeany had put in there.

14:44:58 14 Q. And you reviewed this, right?

14:45:00 15 A. I reviewed it.

14:45:01 16 Q. And the blue shaded area on this map was identified  
14:45:05 17 as the secondary marketing region for Imperial, do you see  
14:45:08 18 that?

14:45:08 19 A. That's what McKeany has put.

14:45:11 20 Q. And Imperial tends to sell more sugar in the  
14:45:14 21 southeast than in the northeast, right?

14:45:16 22 A. Yes.

14:45:16 23 Q. And one factor why that is true is because it's more  
14:45:20 24 expensive for Imperial to ship from Savannah to the  
14:45:23 25 northeast than to ship to some customers in the southeast,

J. Hines - direct

14:45:28 1 right?

14:45:28 2 A. Yes.

14:45:28 3 Q. Now, because you can be more reliable about  
14:45:33 4 delivering sugar to a customer to a quicker basis, that is  
14:45:37 5 another reason Imperial sells more sugar in the southeast  
14:45:40 6 than the northeast?

14:45:41 7 A. That could be one of the reasons, there are also more  
14:45:44 8 manufacturing facilities in Georgia.

14:45:46 9 Q. Earlier you testified that Imperial's core geography  
14:45:46 10 for the super sack business to be Alabama, Mississippi,  
14:45:51 11 Florida, Georgia, North Carolina, South Carolina, Kentucky  
14:45:51 12 and Tennessee, right?

14:45:51 13 A. Depending on the year for totes, yes.

14:46:00 14 Q. And that core geography are all the states covered by  
14:46:04 15 this red region on this map, right?

14:46:04 16 A. That is correct, that's what McKeany put there.

14:46:04 17 Q. And after reviewing this, you did not tell McKeany or  
14:46:13 18 Pepsi that the depictions of Imperial's primary or secondary  
14:46:17 19 market regions were not accurate, right?

14:46:19 20 A. No, I did not notify McKeany because Pepsi sent this  
14:46:25 21 to me just to see what they had been told about our refinery  
14:46:30 22 selection, so I did tell Pepsi that they might want to  
14:46:35 23 double-check with McKeany because some information was  
14:46:39 24 inaccurate, for instance, the sugar trader that they listed  
14:46:42 25 had been gone for four years.

J. Hines - direct

14:46:44 1 Q. That was the only information you asked them to  
14:46:46 2 correct, right?

14:46:46 3 A. Yes, because we were going to discuss our own numbers  
14:46:49 4 and everything at the meeting ourselves.

14:46:51 5 Q. You can put that document away.

14:46:54 6 Now, Ms. Hines, when deciding what price to  
14:46:58 7 quote a potential customer you look at the competitors that  
14:47:02 8 can bid on the business, right?

14:47:03 9 A. Yes, we do.

14:47:04 10 Q. And when putting together a bid Imperial will review  
14:47:07 11 who you think could compete on the business and what you  
14:47:12 12 think the competitor could possibly do for pricing, right?

14:47:15 13 A. Yes, we did that as a group.

14:47:17 14 Q. And you will look at the customer's shipping location  
14:47:20 15 and assess which competitors could possibly ship into that  
14:47:24 16 customer's shipping location, right?

14:47:26 17 A. Yes.

14:47:28 18 Q. I think you told me at your deposition you have a map  
14:47:31 19 in your head and by knowing the customer's shipping  
14:47:34 20 locations, that helps you understand which competitors could  
14:47:37 21 bring in sugar and which competitors could not bring in  
14:47:40 22 sugar to that location, right?

14:47:42 23 A. Yes.

14:47:44 24 Q. Now, Imperial will also estimate the freight cost of  
14:47:47 25 the competitors to ship sugar to that customer location,

J. Hines - direct

14:47:49 1 right?

14:47:49 2 A. Yes, we estimate it.

14:47:50 3 Q. And so you have an idea of which other competitors  
14:47:53 4 are likely to be able to compete on the business, right?

14:47:57 5 A. At times, yes.

14:47:58 6 Q. You also look at a report called the Sosland Report  
14:48:02 7 that gives a general view of what pricing is by certain  
14:48:05 8 areas of the country, right?

14:48:07 9 A. I do receive the Sosland.

14:48:11 10 Q. Is it a weekly report that Imperial subscribed to?

14:48:13 11 A. Yes, we did.

14:48:14 12 Q. The Sosland Report provides general pricing  
14:48:18 13 information for the West Coast, Midwest, Northeast, Gulf and  
14:48:23 14 the southeast regions of the United States; right?

14:48:26 15 A. Yes.

14:48:27 16 Q. And it's been your observation that prices generally  
14:48:31 17 vary by region; right?

14:48:33 18 A. Yes.

14:48:34 19 Q. And when assessing what price to bid for a customer,  
14:48:38 20 you do not take into account the prices of imported refined  
14:48:42 21 sugar; right?

14:48:43 22 A. Depending on who we think can bring -- who can  
14:48:47 23 compete for that business, we may look at it that way.

14:48:51 24 Q. Now, I took your deposition back in 2021, for DOJ  
14:49:00 25 investigation on the merger, do you recall that?

J. Hines - direct

14:49:03 1 A. Yes.

14:49:03 2 Q. Can you turn to your deposition that's in your  
14:49:06 3 report, in your notebook there, CID deposition, I would like  
14:49:10 4 to direct your attention to page 252. I want to direct your  
14:49:20 5 attention to lines 10 through 14. Are you there, Ms. Hines?

14:49:33 6 A. Yes.

14:49:34 7 Q. All right. So line 10:

14:49:36 8 "QUESTION: When you're assessing what price to  
14:49:38 9 bid for a customer, do you take into account what the import  
14:49:43 10 prices of refined sugar are?

14:49:45 11 "ANSWER: No."

14:49:46 12 Did I ask you that question and did you give me  
14:49:48 13 that answer?

14:49:49 14 A. Excuse me, are you under -- what tab did you say you  
14:49:54 15 were underneath again?

14:49:54 16 Q. The CID depo tab.

14:50:00 17 A. Sorry.

14:50:07 18 Q. Page 252, lines 10 to 14.

14:50:10 19 A. Yes.

14:50:12 20 Q. All right. I'll ask you the question again. The  
14:50:14 21 question: "When you're assessing what price to bid for a  
14:50:18 22 customer, do you take into account what the import prices of  
14:50:22 23 refined sugar are?"

14:50:24 24 "ANSWER: No."

14:50:25 25 Did I ask you that question and did you give me

J. Hines - direct

14:50:27 1 that answer?

14:50:27 2 A. Yes, at that time that was an accurate statement for  
14:50:30 3 me back then.

14:50:31 4 Q. Back in was it September of 2021?

14:50:34 5 A. Yes.

14:50:38 6 Q. All right. When Imperial delivers sugar to the  
14:50:40 7 customer's location, the customer pays a delivery price;  
14:50:43 8 right?

14:50:43 9 A. If we deliver it, yes, they do.

14:50:46 10 Q. And the delivered price is the price the customer  
14:50:48 11 pays in total for the sugar to be delivered to the shipping  
14:50:52 12 location; right?

14:50:52 13 A. Yes.

14:50:52 14 Q. To the customer's location?

14:50:54 15 A. Yes.

14:50:54 16 Q. Now, freight costs make up a significant portion of  
14:50:58 17 the delivery price, right?

14:50:59 18 A. Because our raw sugar costs are 70 percent  
14:51:03 19 approximately of our costs, yes, the transportation is part  
14:51:07 20 of that, and it is significant.

14:51:09 21 Q. Transportation cost is a significant component of the  
14:51:13 22 delivered price, right?

14:51:14 23 A. Yes, because our raw sugar costs are 70 percent and  
14:51:18 24 they can't be changed, so freight rates are significant to  
14:51:22 25 us because every penny counts.

J. Hines - direct

14:51:24 1 Q. That wasn't my question. My question was freight  
14:51:27 2 costs are a significant component of the delivered price?

14:51:30 3 A. Yes, they are one of the significant components.

14:51:33 4 Q. Now, price is not the only dimension on which  
14:51:37 5 Imperial competes, though, right?

14:51:39 6 A. Yes.

14:51:39 7 Q. Another factor customers might consider when  
14:51:43 8 selecting a supplier is reliability, right?

14:51:46 9 A. Yes.

14:51:46 10 Q. Imperial differentiates itself from competitors by  
14:51:50 11 striving to have the best reliability, right?

14:51:52 12 A. Yes.

14:51:52 13 Q. Another factor a customer might consider is risk  
14:51:56 14 tolerance, right?

14:51:57 15 A. Yes.

14:51:57 16 Q. By risk tolerance, some customers may want more than  
14:52:00 17 one supplier supplying a location, right?

14:52:04 18 A. Yes.

14:52:05 19 Q. Will you turn to PTX 163 in your notebook. Have you  
14:52:21 20 seen PTX 163?

14:52:21 21 A. Yes.

14:52:22 22 Q. PTX 163 the Jabber message between you and your boss,  
14:52:32 23 Patrick Henneberry, right?

14:52:34 24 A. Yes.

14:52:35 25 MR. HANNA: At this time, the United States



J. Hines - direct

14:52:38 1 seeks to admit PTX 163 into evidence.

14:52:42 2 MR. ZACH: No objection, Your Honor.

14:52:43 3 THE COURT: Thank you.

14:52:43 4 (PTX Exhibit No. 163 was admitted into  
14:52:45 5 evidence.)

14:52:45 6 BY MR. HANNA:

14:52:45 7 Q. Ms. Hines, I want to direct your attention to the  
14:52:47 8 first page of 1:28 you say, you asked Mr. Henneberry, what  
14:52:55 9 tolling range for the several year period do you want Kim to  
14:52:58 10 give to Molson Coors today. That's what you wrote, right?

14:53:01 11 A. Yes, I did.

14:53:03 12 Q. At the time of the time of your message, Imperial was  
14:53:06 13 bidding on a specific bid for Molson Coors, right?

14:53:09 14 A. She was giving them a price indication at that time.

14:53:12 15 Q. And the she referred to is Kim Youngblood who reports  
14:53:15 16 to you?

14:53:17 17 A. Yes.

14:53:19 18 Q. She is an Imperial regional sales manager?

14:53:21 19 A. Yes.

14:53:23 20 Q. And Imperial was bidding to supply sugar to the  
14:53:26 21 Molson Coors facility in Texas and Georgia, right?

14:53:28 22 A. Yes.

14:53:30 23 Q. I want to look at your message at 132 mark. We have  
14:53:33 24 it on your computer screen. You said, we only have a chance  
14:53:36 25 really in Georgia, right?

J. Hines - direct

14:53:50 1 A. Yes.

14:53:50 2 Q. So you didn't think Imperial was able -- would be  
14:53:53 3 able to be competitive for a Texas Molson Coors facility due  
14:53:58 4 to freight costs, right?

14:54:00 5 A. Yeah.

14:54:00 6 Q. I want to direct your attention to Mr. Henneberry's  
14:54:04 7 message to you at 1:49 at the bottom of the first page up on  
14:54:07 8 the screen as well. Mr. Henneberry asked you, do they care  
14:54:12 9 beet or cane, right?

14:54:13 10 A. Yeah.

14:54:14 11 Q. And then in your reply, you confirm that Molson  
14:54:19 12 Coor's required cane for this business, right?

14:54:21 13 A. Yes, for this one specific line they were producing,  
14:54:25 14 yes.

14:54:25 15 Q. Now, if you know that a customer like Molson Coors  
14:54:29 16 requires cane sugar, then you know that a beet supplier is  
14:54:33 17 not going to be able to compete for that business right?

14:54:36 18 A. Yes.

14:54:36 19 Q. I want to direct your attention to Mr. Henneberry's  
14:54:40 20 long response to you at 2:01 p.m. Do you see that?  
14:54:54 21 Mr. Henneberry says, "For Georgia, we have a locational  
14:54:58 22 advantage."

14:55:00 23 That's what he wrote, right?

14:55:02 24 A. Yes, because of the mileage.

14:55:04 25 Q. Right. By locational advantage of Georgia,

J. Hines - direct

14:55:08 1 Imperial's freight cost would be lower than other suppliers  
14:55:12 2 that are not close to this Molson Coors facility in Georgia,  
14:55:16 3 right?

14:55:16 4 A. Yes.

14:55:17 5 Q. Imperial would have advantage because Imperial cost  
14:55:21 6 to supply sugar to Molson Coors would be less than the  
14:55:24 7 competition, right?

14:55:25 8 A. That was his estimate, yeah.

14:55:26 9 Q. Now the competitors he is estimating this message,  
14:55:30 10 he's estimating freight cost for LSR, ASR and United, right?

14:55:35 11 A. Yeah.

14:55:36 12 Q. And ASR is referred to sometimes as Domino Sugar,  
14:55:41 13 right?

14:55:41 14 A. Yes.

14:55:41 15 Q. And LSR Sugar sold by Cargill?

14:55:44 16 A. Yes.

14:55:45 17 Q. Now, he's not estimating the freight costs of any  
14:55:49 18 distributors in this e-mail, right?

14:55:50 19 A. Not on this chat, no.

14:55:53 20 Q. Now, I want to direct your attention to your reply to  
14:55:56 21 him at 2:01 p.m. right below that. You inform your boss,  
14:56:01 22 Mr. Henneberry, you say, "We have always lost Georgia to  
14:56:05 23 United cane on the last three bids."

14:56:07 24 That's what you wrote, right?

14:56:09 25 A. Yes.

J. Hines - direct

14:56:09 1 Q. And you actually wrote BIS, but you actually typo,  
14:56:13 2 you meant B-I-D-S, bids?

14:56:17 3 A. Yes.

14:56:17 4 Q. So on the last three bids from Molson Coors Georgia  
14:56:21 5 business, Imperial competed against United on the cane and  
14:56:26 6 it should go out of Clewiston Florida refinery?

14:56:29 7 A. Yes.

14:56:29 8 Q. Imperial is currently serving Molson Coor's sugar  
14:56:34 9 needs for its Georgia facility, right?

14:56:34 10 A. Yes.

14:57:10 11 Q. Ms. Hines, if you could turn to PTX 137 in your  
14:57:15 12 notebook. PTX 137 is an e-mail dated August 8, 2018, from  
14:57:21 13 you to the CEO of Imperial, Mike Gorrell?

14:57:32 14 A. Yes, it is.

14:57:34 15 MR. HANNA: Your Honor, at this time the United  
14:57:35 16 States moves to admit PTX 137 into evidence.

14:57:38 17 MR. ZACH: No objection, Your Honor.

14:57:41 18 THE COURT: Thank you. It's admitted.

14:57:41 19 (PTX Exhibit No. 137 was admitted into  
14:57:42 20 evidence.)

14:57:42 21 BY MR. HANNA:

14:57:45 22 Q. Ms. Hines in this e-mail you're informing Mr. Gorrell  
14:57:46 23 for a bidding event for General Mills facility in  
14:57:50 24 Murfreesburo, Tennessee?

14:57:50 25 A. Yes.

J. Hines - direct

14:57:55 1 Q. I want to look at your e-mail at the top of this  
14:57:57 2 e-mail chain. I want to direct your attention to the  
14:58:02 3 middle, about five lines down of your e-mail. We'll  
14:58:06 4 highlight it on the computer screen for you. You tell  
14:58:09 5 Mr. Gorrell, that you are not hopeful on this location;  
14:58:14 6 right?

14:58:14 7 A. Yes, I did.

14:58:16 8 Q. By location, you meant the General Mills facility in  
14:58:20 9 Murfreesburo, Tennessee, right?

14:58:23 10 A. Yes.

14:58:24 11 Q. I want to direct your attention to something you said  
14:58:27 12 about three lines down, you see where he said also on every  
14:58:31 13 bid, do you see that?

14:58:32 14 A. Yes, I did.

14:58:33 15 Q. You inform Mr. Gorrell in writing here, "Also on  
14:58:37 16 every bid we have won on the auction, and we were number one  
14:58:41 17 in price. United has come back in after the fact, Amanda  
14:58:44 18 called with a lower price and then got the business."

14:58:49 19 That's what you told Mr. Gorrell, right?

14:58:51 20 A. That's what my salesperson Kim Youngblood had told  
14:58:56 21 me.

14:58:56 22 Q. And you're reporting that to the CEO of Imperial?

14:59:01 23 A. Yes.

14:59:02 24 Q. You understand in the past bid, Imperial had been the  
14:59:04 25 lowest bidder for the General Mills Murfreesburo, Tennessee

J. Hines - direct

14:59:10 1 location, right?

14:59:11 2 A. Yes.

14:59:11 3 Q. And you understand that United won the General Mills  
14:59:14 4 business in Murfreesburo, Tennessee by coming in behind  
14:59:19 5 Imperial and lowering its price?

14:59:20 6 A. That's what Kim had told me.

14:59:24 7 Q. You can put this document to the side and turn to PTX  
14:59:29 8 154 in your notebook. Do you have 154 up?

14:59:43 9 A. Yes.

14:59:43 10 Q. All right. PTX 154 is an e-mail between you and  
14:59:47 11 Imperial sales team between August 31st and September 7th,  
14:59:52 12 2018; right?

14:59:55 13 A. Are you saying 154?

14:59:58 14 Q. Yes, PTX 154.

15:00:01 15 A. Okay.

15:00:02 16 Q. This is about Costco?

15:00:04 17 A. Yes.

15:00:05 18 Q. And this is an e-mail that you're on, this e-mail  
15:00:10 19 chain between August 31st and September 7th, right?

15:00:13 20 A. Yes.

15:00:14 21 MR. HANNA: Your Honor, at this time United  
15:00:16 22 States moves to admit PTX 154 into evidence.

15:00:18 23 MR. ZACH: No objection, Your Honor.

15:00:21 24 THE COURT: Thank you, it's admitted.

15:00:23 25 (PTX Exhibit No. 154 was admitted into

J. Hines - direct

15:00:23 1 evidence.)

15:00:23 2 BY MR. HANNA:

15:00:24 3 Q. Ms. Hines, as I said earlier, this is an e-mail about  
15:00:27 4 a bidding event for Costco, Southeast and Northeast  
15:00:31 5 divisions, right?

15:00:32 6 A. Yes.

15:00:32 7 Q. And the Costco Southeast division means the  
15:00:36 8 distribution center in Georgia and Florida where Costco  
15:00:42 9 ships out to retail outlets in that region?

15:00:44 10 A. Yes.

15:00:44 11 Q. The Costco Northeast division means the distribution  
15:00:47 12 centers in Maryland and New Jersey that ships out to those  
15:00:53 13 centers, right?

15:00:53 14 A. Yes.

15:00:53 15 Q. That actually includes the Delaware region, right?

15:00:58 16 A. Yes.

15:00:58 17 Q. For this particular Costco bidding opportunity,  
15:01:02 18 Imperial was bidding to supply the Costco southeast and  
15:01:05 19 northeast division with 25-pound bags and 50-pound bags,  
15:01:10 20 right?

15:01:10 21 A. Yes.

15:01:11 22 Q. I want to look at your e-mail generated September 7,  
15:01:12 23 2018, at 1:09 p.m. Again, we put it up on the computer  
15:01:12 24 screen if it's helpful for you, Ms. Hines. Do you see where  
15:01:22 25 you write, "Costco feedback, any room to go down slightly?

J. Hines - direct

15:01:27 1 Competing with United Cane."

15:01:29 2 A. Yes.

15:01:30 3 Q. You understood that United had submitted a competing  
15:01:34 4 bid for this Costco bid using sugar out of the Clewiston,  
15:01:39 5 Florida refinery, right?

15:01:41 6 A. Yes.

15:01:41 7 Q. When you said any room to go down slightly, you  
15:01:44 8 understood that Costco wanted Imperial to lower its bid  
15:01:48 9 price, right?

15:01:49 10 A. Yes.

15:01:49 11 Q. I want to turn to Ms. Hancock, Heidi Hancock's e-mail  
15:01:54 12 at 1:23 p.m. Ms. Hancock is in the sales department at  
15:01:59 13 Imperial, right?

15:02:00 14 A. Yes.

15:02:00 15 Q. You see she says, "This is priced at net FOB \$34.  
15:02:09 16 Pat? Mike? Thoughts?"

15:02:12 17 Pat and Mike are referring to Patrick Henneberry  
15:02:16 18 and Mike Gorrell?

15:02:17 19 A. Yes.

15:02:18 20 Q. The initial bid price from Imperial was 34 FOB price,  
15:02:24 21 right?

15:02:24 22 A. Yes.

15:02:24 23 Q. For this Costco southeast northeast division business  
15:02:29 24 right?

15:02:29 25 A. Yes.



J. Hines - direct

15:02:30 1 Q. I want to turn to the next e-mail in this chain which  
15:02:32 2 is from Ms. Hancock at 2:45 p.m., I believe it's on page 1.  
15:02:43 3 Now, Ms. Hancock is getting back to you with revised pricing  
15:02:48 4 from Costco, after you sent some bid intelligence about  
15:02:53 5 competing with United Cane right?

15:02:54 6 A. Yes, she did.

15:02:55 7 Q. I want to go to the top of the next page where her  
15:02:58 8 response continues. And you see where Ms. Hancock says,  
15:03:05 9 "The 50-pound are priced net FOB bulk at \$33.91. Good  
15:03:13 10 luck."

15:03:13 11 A. Yes.

15:03:14 12 Q. So Ms. Hancock was given you the green light to offer  
15:03:19 13 Costco a lower price to the 50-pound bags from \$34 to now  
15:03:24 14 \$33.91 right?

15:03:24 15 A. She was lowering it because of our range we had  
15:03:28 16 available to sell.

15:03:29 17 Q. She was lower the price that Imperial would offer a  
15:03:33 18 Costco customer, right?

15:03:33 19 A. Yeah, because we had a price range.

15:03:35 20 Q. Imperial, in fact, did offer Costco this lower price  
15:03:38 21 of \$33.91 per bag, right?

15:03:42 22 A. Yes.

15:03:43 23 Q. And Costco awarded Imperial some of this business?

15:03:47 24 A. Yes, on this one, they did.

15:03:49 25 Q. And currently today Imperial supplies the southeast

J. Hines - direct

15:03:52 1 and northeast divisions of Costco with 10-pound bags,  
15:03:56 2 25-pound bags and 50-pound bags, right?

15:03:58 3 A. Yes, we did.

15:04:00 4 Q. You can set that document to the side.

15:04:02 5 Let's talk about Pepsi Wytheville, Virginia  
15:04:07 6 facility. If you could turn to PTX 164 in your notebook.  
15:04:20 7 Do you have PTX 164 pulled up?

15:04:22 8 A. Yes, I do.

15:04:23 9 Q. PTX 164 is an e-mail regarding a bidding event for  
15:04:27 10 the Pepsi Wytheville, Virginia sugar business in 2019,  
15:04:32 11 right?

15:04:32 12 A. Yes.

15:04:34 13 MR. HANNA: Your Honor, at this time the United  
15:04:36 14 States seek to admit PTX 164 into evidence.

15:04:40 15 MR. ZACH: No objection.

15:04:41 16 THE COURT: It's admitted.

15:04:41 17 (PTX Exhibit No. 164 was admitted into  
15:04:43 18 evidence.)

15:04:43 19 BY MR. HANNA:

15:04:43 20 Q. Let's look at your e-mail at the top of this e-mail  
15:04:46 21 chain. You told Mr. Gorrell and Ms. Henneberry, "I would  
15:04:51 22 say it's either Domino or United Florida."

15:04:52 23 That's what you wrote?

15:04:52 24 A. That was me guessing.

15:04:52 25 Q. You thought the likely competition for the Pepsi

J. Hines - direct

15:05:00 1 Wytheville, Virginia facility would be United out of  
15:05:04 2 Clewiston, Florida or Domino?

15:05:07 3 A. Yes.

15:05:08 4 Q. And you thought United would competing out Clewiston,  
15:05:12 5 Florida, because you had learned that Pepsi for that  
15:05:15 6 Wytheville, Virginia facility required cane sugar?

15:05:18 7 A. I don't recall if they told me cane or not at that  
15:05:25 8 time, I don't remember.

15:05:26 9 Q. If I showed you your deposition, do you think that  
15:05:29 10 would refresh your recollection?

15:05:30 11 A. It could be, but to be honest, I don't remember. I  
15:05:37 12 would have to look back.

15:05:38 13 Q. Can you turn to your CID deposition. I want to  
15:05:49 14 direct your attention to line 19 through 25. CID depo 159?

15:05:58 15 A. Yes.

15:05:58 16 Q. If you could read to yourself lines 19 through 25.

15:06:05 17 A. (Witness reviewing.) Yes, I see that.

15:06:13 18 Q. Does that refresh your recollection that Pepsi was  
15:06:17 19 requiring cane sugar for the Pepsi Wytheville, Virginia  
15:06:21 20 facility?

15:06:21 21 A. At that time they must have been because they  
15:06:23 22 converted back and forth.

15:06:25 23 Q. And likewise, you thought Domino was likely to be the  
15:06:28 24 other competition for this Pepsi Wytheville, Virginia  
15:06:32 25 business, because you knew at the time they required cane

J. Hines - direct

15:06:35 1       **sugar, right?**

15:06:36 2       A.       **Yes.**

15:06:36 3       Q.       **LSR produces cane sugar, which is sold by Cargill,**  
15:06:41 4       **right?**

15:06:42 5       A.       **Yes.**

15:06:42 6       Q.       **You didn't mention LSR or Cargill in your e-mail,**  
15:06:46 7       **right?**

15:06:46 8       A.       **No, I did not.**

15:06:47 9       Q.       **You thought LSR was not competing for this Pepsi**  
15:06:53 10       **Wytheville, Virginia?**

15:06:54 11       A.       **At that time, no.**

15:06:55 12       Q.       **Because you thought LSR Cargill was located too far**  
15:07:00 13       **away in Gramercy, Louisiana?**

15:07:00 14       A.       **Yes.**

15:07:03 15       Q.       **You never seen LSR Cargill go that far from Louisiana**  
15:07:07 16       **to sell sugar, which could be due to freight cost, right?**

15:07:13 17       A.       **At that time, yes.**

15:07:14 18       Q.       **Now ultimately, Imperial did win the Pepsi**  
15:07:17 19       **Wytheville, Virginia business to provide both granulated**  
15:07:20 20       **sugar and liquid sugar, right?**

15:07:23 21       A.       **Yes.**

15:07:23 22       Q.       **At the time of this e-mail, United was the incumbent**  
15:07:27 23       **supplier for the Wytheville, Virginia business?**

15:07:32 24       A.       **Yes, they were.**

15:07:32 25       Q.       **If you could turn to PTX 147 in your notebook. PTX**

J. Hines - direct

15:07:48 1 147 is the e-mail from Imperial CEO to you and others, dated  
15:07:55 2 April 23, 2019, is that right?

15:07:58 3 MR. HANNA: Your Honor, at this time, United  
15:08:01 4 States moves to admit PTX 147 into evidence.

15:08:05 5 MR. ZACH: No objection, Your Honor.

15:08:06 6 THE COURT: Thank you.

15:08:06 7 (PTX Exhibit No. 147 was admitted into  
15:08:08 8 evidence.)

15:08:08 9 BY MR. HANNA:

15:08:08 10 Q. This is another e-mail about the Wytheville, Virginia  
15:08:12 11 Pepsi facility, right?

15:08:13 12 A. Yes, it is.

15:08:13 13 Q. At the top of this e-mail in April of 2019, as of  
15:08:18 14 April 2019, Imperial had been serving the Wytheville,  
15:08:22 15 Virginia facility for about four months, right?

15:08:23 16 A. Yes.

15:08:24 17 Q. Now, I want to direct your attention to the middle of  
15:08:27 18 the first page at 11:08 a.m., your e-mail. Do you see that?  
15:08:31 19 You say a little background, do you see that paragraph?

15:08:32 20 A. Yes.

15:08:32 21 Q. And then on the second line you inform everybody on  
15:08:41 22 this e-mail their cane sugar supply had been from United.  
15:08:42 23 That's what you wrote, right?

15:08:42 24 A. Yes, I did.

15:08:42 25 Q. Now, you're providing everyone on this e-mail some

J. Hines - direct

15:08:50 1 context of Imperial taking over the Wytheville, Virginia  
15:08:53 2 facility from United, right?

15:08:55 3 A. Yes.

15:08:57 4 Q. And you had learned that when United was the supplier  
15:09:00 5 to this Wytheville, Virginia facility, United had been  
15:09:04 6 delivering sugar that was lumpy and it was difficult to get  
15:09:07 7 out of the railcars, right?

15:09:09 8 A. The cane that they had originally shipped had been,  
15:09:11 9 and then they had changed it to beet.

15:09:14 10 Q. You had learned from Pepsi that the cane sugar that  
15:09:18 11 had come from Clewiston that United was delivering was lumpy  
15:09:22 12 and it was difficult to get out of the railcars, right?

15:09:24 13 A. Yes, that's what they told us.

15:09:27 14 Q. You learned that Pepsi did not like how the sugar  
15:09:31 15 from United was coming out of the railcars at Wytheville,  
15:09:35 16 Virginia, right?

15:09:38 17 A. For the cane, yes.

15:09:41 18 Q. Then you write in here, not once did they send anyone  
15:09:45 19 in to review the system, sugar, or attempt to solve any of  
15:09:49 20 their issues. That's what you wrote?

15:09:52 21 A. That's what Pepsi had told me.

15:09:55 22 Q. And that's what you learned?

15:09:58 23 A. Yes.

15:09:59 24 Q. And the they is referring to United, right?

15:09:59 25 A. Yes.

J. Hines - direct

15:09:53 1 Q. And so you learned that United not once sent anyone  
15:09:56 2 to review the unloading process; right?

15:09:59 3 A. Yes.

15:09:59 4 Q. And you learned that United not once sent anyone to  
15:10:03 5 inspect the sugar United was delivering to the Pepsi  
15:10:07 6 Wytheville, Virginia facility, right?

15:10:08 7 A. Yes.

15:10:09 8 Q. And you learned that United never made any attempt to  
15:10:11 9 solve any of Pepsi's issues with the quality of the sugar,  
15:10:15 10 right?

15:10:15 11 A. That's what Pepsi had told me, yes.

15:10:17 12 Q. So after Pepsi told you that in a meeting, Imperial  
15:10:21 13 sent Mike Kaminski to the Pepsi Wytheville, Virginia to  
15:10:24 14 provide Pepsi suggestions on how to improve the railcar  
15:10:30 15 unloading process, right?

15:10:31 16 A. Actually Mike was actually at that meeting, too, for  
15:10:35 17 the meeting itself.

15:10:36 18 Q. He was at the meeting with Pepsi?

15:10:39 19 A. Yes, he was in that meeting with me.

15:10:41 20 Q. And then Mr. Kaminski actually went to the  
15:10:44 21 Wytheville, Virginia facility and helped out with the  
15:10:47 22 unloading process when the sugar was arriving for Imperial,  
15:10:50 23 right?

15:10:50 24 A. We were actually at the Wytheville location so he  
15:10:52 25 just stayed there.

J. Hines - direct

15:10:56 1 Q. Mr. Kaminski is the plant manager for Imperial  
15:10:57 2 Ludlow, Kentucky facility?

15:11:02 3 A. Yes.

15:11:02 4 Q. And you understood that he gave suggestions to Pepsi  
15:11:06 5 on how to unload to railcars, right?

15:11:08 6 A. To improve how their unloading system was working,  
15:11:12 7 yes.

15:11:12 8 Q. And you understood that the Pepsi team was thrilled  
15:11:15 9 about his advice about the railcar unloading process, right?

15:11:18 10 A. Yes, that's what was shared with me.

15:11:21 11 Q. And you wrote in there, after Mike was there, they  
15:11:23 12 were thrilled at his advice and our sugar. That's what you  
15:11:26 13 wrote?

15:11:28 14 A. Yes, it is.

15:11:29 15 Q. And you understand that the Pepsi team at the  
15:11:32 16 Wytheville, Virginia facility location was happy with the  
15:11:34 17 quality of the sugar from Imperial?

15:11:36 18 A. Yes.

15:11:38 19 Q. Imperial was able to hold on to this Wytheville,  
15:11:41 20 Virginia business for the next two years, right?

15:11:43 21 A. Yes, we were.

15:11:51 22 Q. Ms. Hines, you were aware of generally what prices  
15:11:53 23 other suppliers of refined sugar are selling to customers,  
15:11:55 24 right?

15:11:57 25 A. You can see pricing in the Sosland Report.



J. Hines - direct

15:12:03 1 Q. You get market intelligence from varied sources,  
15:12:06 2 right?

15:12:07 3 A. Yes, I do.

15:12:08 4 Q. And one of your sources to get pricing information  
15:12:10 5 from competitors is a broker named Jerry Kramer, right?

15:12:14 6 A. Yes.

15:12:15 7 Q. If you could please turn to PTX 127 in your notebook.

15:12:30 8 Ms. Hines, PTX 127 is an e-mail from you dated  
15:12:34 9 November 15, 2019, where you are responding back to Jerry  
15:12:39 10 Kramer who has sent you an e-mail, right?

15:12:41 11 A. Yes.

15:12:43 12 MR. HANNA: Your Honor, at this time the United  
15:12:45 13 States moves to admit PTX 127 into evidence.

15:12:48 14 MR. ZACH: No objection, Your Honor.

15:12:49 15 THE COURT: Thank you.

15:12:49 16 (PTX Exhibit No. 127 was admitted into  
15:12:52 17 evidence.)

15:12:52 18 BY MR. HANNA:

15:12:52 19 Q. Ms. Hines, Mr. Kramer has been in the industry for a  
15:12:57 20 very long time, right?

15:12:58 21 A. Yes, he has.

15:12:59 22 Q. You have known Mr. Kramer for about fifteen years  
15:13:02 23 since you started at Imperial, right?

15:13:04 24 A. Yes.

15:13:05 25 Q. The topic of Mr. Kramer's e-mail to you is about

J. Hines - direct

15:13:08 1 Domino Sugar's pricing, right?

15:13:14 2 A. Yes, he sent it to us, yes.

15:13:15 3 Q. He sent it to you and Mr. Gorrell and Mr. Henneberry,  
15:13:20 4 right?

15:13:20 5 A. Yes.

15:13:21 6 Q. All right. Now I want to focus on Mr. Kramer's  
15:13:25 7 initial e-mail to you, I think it's on the second page. Do  
15:13:33 8 you see that Mr. -- you had received some pricing  
15:13:35 9 information that Domino has offering industrial customers  
15:13:39 10 and distributor customers right?

15:13:41 11 A. That's what Jerry provided.

15:13:45 12 Q. He provided it to you, right?

15:13:46 13 A. To the group, yes.

15:13:48 14 Q. And Domino is Imperial's competitor, right?

15:13:51 15 A. Yes. And he says it's from reliable sources.

15:13:54 16 Q. He told you he has reliable sources that are  
15:13:58 17 providing you that information?

15:13:59 18 A. Those were his definitions, reliable source.

15:14:03 19 Q. Mr. Kramer tries to be helpful in this way, in giving  
15:14:06 20 you any information that he thought it might be helpful to  
15:14:09 21 you, right?

15:14:09 22 A. He sends a lot of information, yes.

15:14:12 23 Q. I want to go to your response to him on the, I think  
15:14:15 24 it's on the first page at 12:46 p.m. And your response, you  
15:14:20 25 wanted Mr. Kramer to get you the pricing that Domino was

Hines - cross

15:14:30 1 charging retail customers, right?

15:14:31 2 A. I am asking him if he had seen anything with Domino  
15:14:36 3 in the retail side of the business because we had received  
15:14:39 4 two requests from two major retailers in the northeast  
15:14:43 5 wanting to put the Imperial brand into distribution and I  
15:14:46 6 couldn't understand why they wanted it, so I was asking if  
15:14:49 7 he had seen anything.

15:14:51 8 Q. All right. You wanted him to go out and get Domino's  
15:14:55 9 pricing?

15:14:56 10 A. No, I just wanted to see if he had any ideas of what  
15:15:00 11 was going on.

15:15:00 12 Q. Than you knew that he had reliable sources that could  
15:15:03 13 get you Domino pricing information?

15:15:05 14 A. No, this is the retail side so I don't know if he has  
15:15:08 15 anything on the retail side of the business.

15:15:10 16 MR. HANNA: No further questions, Your Honor.

15:15:12 17 THE COURT: Thank you.

15:15:14 18 Cross.

15:15:25 19 MR. ZACH: Good afternoon, Your Honor. Dan Zach  
15:15:28 20 for LDC and Imperial Sugar Company. May I proceed?

15:15:32 21 THE COURT: Please.

15:15:32 22 CROSS-EXAMINATION

15:15:32 23 BY MR. ZACH:

15:15:37 24 Q. Good afternoon, Ms. Hines.

15:15:38 25 A. Hello.

Hines - cross

15:15:39 1 Q. So plaintiff's counsel just asked you a number of  
15:15:43 2 questions about different customer interactions and I want  
15:15:46 3 to take a step back and begin by talking to you about the  
15:15:50 4 broader context of Imperial's business.

15:15:53 5 Does Imperial make most of its refined sugar  
15:15:56 6 from imported or domestic raw sugar?

15:15:58 7 A. Because we are not vertically integrated for cane  
15:16:03 8 sugar supply, we get approximately 90 to 95 percent of our  
15:16:08 9 raw sugar from imports.

15:16:09 10 Q. Why does Imperial rely on imports?

15:16:12 11 A. Because they're not vertically integrated which means  
15:16:16 12 we don't have access to domestic raw cane sugar in the US on  
15:16:20 13 a consistent basis.

15:16:21 14 Q. What suppliers can make refined sugar without relying  
15:16:25 15 on imports?

15:16:26 16 A. You got quite a few, you got NSM, Michigan, Western,  
15:16:30 17 LSR, Domino and United.

15:16:35 18 Q. Are Imperial's costs to use imported raw sugar  
15:16:39 19 typically higher than those companies that have access to  
15:16:43 20 domestic sources?

15:16:44 21 A. Yes.

15:16:45 22 Q. As an import refiner, how do Imperial's high raw  
15:16:50 23 sugar costs affect the refined sugar prices that Imperial  
15:16:54 24 charges?

15:16:54 25 A. We are almost always higher than competition.

Hines - cross

15:16:58 1 Q. And how do Imperial's refined sugar prices compare to  
15:17:02 2 those offered by other refined sugar suppliers who have  
15:17:06 3 access to domestic sources?

15:17:07 4 A. When the raw cane market pricing is high, our refined  
15:17:12 5 sugar prices will end up being \$5 to \$7 higher than our  
15:17:17 6 competition, but when it's on an a more average basis, we  
15:17:20 7 may only be \$1 to \$2 higher than competition.

15:17:23 8 Q. So there is a range of prices that Imperial buys  
15:17:26 9 imported raw sugar at?

15:17:27 10 A. Yes.

15:17:28 11 Q. And regardless of whether you are at the high end or  
15:17:31 12 low end of that range, refined sugar prices tend to be  
15:17:34 13 higher than competition?

15:17:37 14 MR. HANNA: Objection. Leading.

15:17:38 15 Q. Does Imperial keep track of its sales of refined  
15:17:42 16 sugar in the ordinary course?

15:17:43 17 A. Yes, we do.

15:17:44 18 Q. What system do you use to track those sales?

15:17:46 19 A. PeopleSoft.

15:17:48 20 Q. I would like to show you a document, it's in your  
15:17:52 21 binder, but we can pull up a redacted version for the  
15:17:55 22 public. And that document is marked DTX 516. Have you been  
15:18:00 23 able to locate the document?

15:18:02 24 A. Yes.

15:18:05 25 Q. What is DTX 516?

Hines - cross

15:18:10 1 A. This is a record of our 2021 sales data.

15:18:15 2 Q. Were you involved in ensuring the accuracy of DTX  
15:18:21 3 516?

15:18:21 4 A. Yes, I was.

15:18:22 5 MR. ZACH: At this time, Your Honor, I move to  
15:18:25 6 enter DTX 516 into evidence.

15:18:28 7 MR. HANNA: No objection.

15:18:29 8 THE COURT: Thank you. It's admitted.

15:18:30 9 (DTX Exhibit No. 516 was admitted into  
15:18:31 10 evidence.)

15:18:31 11 BY MR. ZACH:

15:18:32 12 Q. According to this document, Ms. Hines, what is  
15:18:34 13 Imperial's third largest state in terms of volume sales?

15:18:34 14 A. Texas.

15:18:41 15 Q. And what percent of Imperial's total sales go to  
15:18:45 16 Texas?

15:18:45 17 A. Eleven percent.

15:18:47 18 Q. Who are some of Imperial's largest customers in  
15:18:51 19 Texas?

15:18:52 20 A. HEB. Sam's. Wal-Mart.

15:18:52 21 Q. What percentage of Imperial sales go to the state of  
15:19:01 22 Indiana?

15:19:02 23 A. Six percent.

15:19:02 24 Q. Who are some of Imperial's largest customers in  
15:19:07 25 Indiana?

Hines - cross

15:19:07 1 A. Indiana Sugar, Pepsi, Kroger, Weston Foods.

15:19:11 2 Q. What classes of customers does Imperial sell refined  
15:19:16 3 sugar to?

15:19:16 4 A. We sell to three different classes of trade. We sell  
15:19:19 5 to the industrial channel which our example would be Hershey  
15:19:24 6 or Mars; we sell to the food service/distributor channel,  
15:19:29 7 example would be Indiana Sugar or US Food Service; and the  
15:19:31 8 last would be our retail channel and that would be either a  
15:19:35 9 Kroger or a Wal-Mart.

15:19:36 10 Q. What percent of Imperial total refined sugar sales in  
15:19:41 11 2021 went to the retail sector?

15:19:43 12 A. 21 percent.

15:19:44 13 Q. When selling sugar does Imperial focus on any  
15:19:48 14 particular geography?

15:19:49 15 A. My job is to sell sugar wherever I can sell it,  
15:19:52 16 historically I'll look at previous customers from the past,  
15:19:55 17 we can go from Texas, up to Wisconsin, up to Pennsylvania,  
15:20:00 18 all the way down to Miami, Florida.

15:20:02 19 Q. In the ordinary course, does Imperial define a region  
15:20:05 20 as the southeast in which it operates?

15:20:08 21 A. No.

15:20:08 22 Q. Based on your experience why do customers choose to  
15:20:12 23 buy sugar from Imperial rather than other suppliers?

15:20:15 24 A. They either buy from us because they want to have  
15:20:17 25 multiple suppliers or for our reliability and customer

Hines - cross

15:20:22 1 service.

15:20:22 2 Q. Why, based on your experience, do some customers want  
15:20:25 3 to have multiple suppliers?

15:20:26 4 A. They want to ensure continuity and supply, take for  
15:20:32 5 instance, the hurricane down in the Gulf, they still have  
15:20:35 6 sugar coming in. If there is a big snowstorm or freeze up  
15:20:38 7 in the valley for the beets and it is impacted. They want  
15:20:42 8 to make sure they can still have sugar so their operations  
15:20:44 9 don't stop.

15:20:44 10 Q. When trying to secure contracts with customers, does  
15:20:48 11 Imperial typically have to submit a bid in a RFP or some  
15:20:52 12 other bidding process?

15:20:53 13 A. For many of our industrial customers, we do.

15:20:56 14 Q. During those RFP or bidding processes, do you learn  
15:20:59 15 what the actual prices submitted by your competitors are?

15:21:05 16 A. No.

15:21:05 17 Q. Who do you view to be Imperial's competitors?

15:21:08 18 A. We have a lot. I consider Michigan, NSM, CSC, LSR,  
15:21:14 19 Domino, United, ADM, Batory Foods, ICI, just to name a few.

15:21:23 20 Q. Who is NSM?

15:21:25 21 A. National Sugar Marketing.

15:21:27 22 Q. What are some examples of customers for which NSM  
15:21:32 23 competes with you?

15:21:32 24 A. We go against them, compete with them Bimbo, Bordon,  
15:21:37 25 even Pepsi, Southern Visions, Kings Hawaiian - there are



Hines - cross

15:21:43 1 quite a few.

15:21:44 2 Q. You mentioned Kings Hawaiian. Where is that located?

15:21:47 3 A. Kings Hawaiian is in Flowery Branch, Georgia.

15:21:51 4 Q. How would NSM be able to compete for Kings Hawaiian  
15:21:55 5 based on that?

15:21:55 6 A. They can do it two different ways, they can either  
15:21:58 7 rail beet sugar in from the valley to a transfer station in  
15:22:03 8 Atlanta, Georgia, they have an affiliation with Sucden and  
15:22:06 9 they can bring in imported cane sugar into that same station  
15:22:10 10 in Atlanta and then put it into a bulk truck or liquid truck  
15:22:14 11 and ship it to them.

15:22:15 12 Q. I want to talk now about a number of the customer  
15:22:21 13 interactions that plaintiff's counsel talked to you about.  
15:22:24 14 Let me ask you in total how many customers does Imperial  
15:22:27 15 have?

15:22:27 16 A. In 2021 we had 208 corporate customers.

15:22:34 17 Q. In 2022 how many do you have?

15:22:36 18 A. We're down to 183 corporate customers.

15:22:39 19 Q. Why is that number falling?

15:22:40 20 A. Our refined sugar prices were high, so we lost  
15:22:42 21 business.

15:22:42 22 Q. During your direct examination, plaintiff's counsel  
15:22:43 23 asked you a number of questions about General Mills. Do you  
15:22:52 24 remember that?

15:22:52 25 A. Yes.

Hines - cross

15:22:52 1 Q. And does Imperial currently have a contract to supply  
15:22:56 2 bulk trucks to any of General Mills' locations?

15:22:59 3 A. No.

15:23:00 4 Q. Does Imperial currently supply General Mills'  
15:23:03 5 facility in Tennessee?

15:23:04 6 A. No.

15:23:05 7 Q. When was the last time Imperial won General Mills'  
15:23:08 8 business anywhere?

15:23:09 9 A. We haven't won their business in a long time. I know  
15:23:13 10 we helped out in 2017 with nine trucks at that time.

15:23:17 11 Q. And have you served any General Mills' facilities in  
15:23:21 12 Tennessee since then?

15:23:23 13 A. No.

15:23:24 14 Q. Why not?

15:23:24 15 A. Our prices are too high so they can go to CSC that  
15:23:29 16 has lower prices or an LSR or an ADM, their prices are all  
15:23:35 17 lower than ours.

15:23:36 18 Q. Plaintiff's counsel asked you about Pepsi as well.  
15:23:39 19 Do you remember that?

15:23:39 20 A. Yes.

15:23:40 21 Q. How does Pepsi get sugar into its Wytheville  
15:23:45 22 location?

15:23:45 23 A. The primary way is by rail because, 90 percent of  
15:23:48 24 Wytheville has to be in railcar sugar.

15:23:52 25 Q. Given the Wytheville location accepts sugar by rail,

Hines - cross

15:23:58 1 who can compete for Pepsi's business at that location?

15:24:02 2 A. Domino, United, LSR actually could easily do the same  
15:24:06 3 mileage as United, and those would be the ones, NSM could  
15:24:11 4 because they could rail car sugar in as well.

15:24:14 5 Q. You had provided testimony today or been asked some  
15:24:17 6 questions about whether LSR served that facility. You said  
15:24:23 7 at that time you gave your testimony, you gave the  
15:24:25 8 testimony. Today do you believe that LSR could serve Pepsi  
15:24:30 9 in that location?

15:24:32 10 A. Absolutely.

15:24:32 11 Q. How would they do that?

15:24:33 12 A. They would ship it in via a railcar.

15:24:34 13 Q. Approximately how much sugar does Imperial currently  
15:24:40 14 sell to Pepsi?

15:24:41 15 A. Actually for 2022 business, we have roughly 300,000  
15:24:49 16 hundredweight.

15:24:49 17 Q. Has Imperial's volume for Pepsi fallen overtime?

15:24:53 18 A. We're actually down about 27 percent versus the  
15:24:54 19 previous year.

15:24:57 20 Q. Why is that?

15:24:58 21 A. Our prices of refined sugar were too high so we lost  
15:25:02 22 business.

15:25:02 23 Q. Plaintiff's counsel also asked you about Molson  
15:25:06 24 Coors. Do you recall that?

15:25:06 25 A. Yes.

Hines - cross

15:25:07 1 Q. And roughly how much of Imperial's total sales volume  
15:25:11 2 did Molson Coors account for in 2021?

15:25:15 3 A. They did .6 percent of our total business.

15:25:20 4 Q. Less than one percent?

15:25:21 5 A. Yes.

15:25:23 6 Q. I want to talk for a moment about some customers that  
15:25:28 7 didn't come up in your direct examination. Are you aware of  
15:25:31 8 a company named Post?

15:25:33 9 A. Yes.

15:25:33 10 Q. And who's Post?

15:25:35 11 A. They're a maker of cereals.

15:25:38 12 Q. Does Imperial compete effectively for Post's business  
15:25:41 13 in North Carolina?

15:25:42 14 A. No, we do not.

15:25:43 15 Q. Why?

15:25:44 16 A. Our prices are too high. In fact, we just did a bid,  
15:25:48 17 and the feedback from the buyers was we were \$5 a  
15:25:53 18 hundredweight higher than our competition.

15:25:54 19 Q. Are you aware of a company named Hostess?

15:25:58 20 A. Yes.

15:25:59 21 Q. Who are they?

15:26:00 22 A. They make Twinkies and Dingdongs.

15:26:02 23 Q. Does Imperial compete effectively for Hostess's  
15:26:07 24 business?

15:26:07 25 A. No, we do not.

Hines - cross

15:26:08 1 Q. Why not?

15:26:09 2 A. Our prices are to high. In fact, we're not even

15:26:13 3 asked to bid.

15:26:14 4 Q. Is that true for the Hostess plant in Georgia?

15:26:16 5 A. Yes.

15:26:18 6 Q. Are you aware of a company named Danone?

15:26:20 7 A. Yes.

15:26:21 8 Q. Who is Danone?

15:26:22 9 A. A maker of yogurt and creamers and waters.

15:26:24 10 Q. Does Imperial compete effectively for Danone's

15:26:28 11 business in Virginia?

15:26:30 12 A. No.

15:26:30 13 Q. Why not?

15:26:30 14 A. Our prices are too high versus CSC.

15:26:35 15 Q. So Danone is served by CSC?

15:26:39 16 A. That is my understanding.

15:26:40 17 Q. Do you have any other examples of instances which CSC

15:26:46 18 has beat Imperial?

15:26:47 19 A. In the past we've lost business with Unilever.

15:26:52 20 Q. You were talking with plaintiff's counsel a moment

15:26:52 21 ago, you were asked about PX 217 which is that map, if you

15:27:04 22 recall.

15:27:04 23 A. Yes.

15:27:05 24 Q. And actually if we could pull it up. Do you

15:27:10 25 remember, the map now that it's on the screen here, PX 217?

Hines - cross

15:27:13 1 A. Yes.

15:27:14 2 Q. And who created PX 217?

15:27:17 3 A. It was from McKeany-Flavell.

15:27:22 4 Q. From whom did you receive this document?

15:27:25 5 A. I received it from Pepsi.

15:27:27 6 Q. So Imperial did not create this map, is that right?

15:27:30 7 A. No, we did not.

15:27:30 8 Q. Does Imperial use this document in the ordinary  
15:27:34 9 course of business for any purpose?

15:27:36 10 A. No.

15:27:36 11 Q. In the ordinary course of business, does Imperial  
15:27:38 12 keep track of primary or secondary marketing regions?

15:27:41 13 A. No.

15:27:43 14 Q. Plaintiff's counsel asked you some questions about  
15:27:51 15 Jerry Kramer, and certain information that Imperial receives  
15:27:54 16 from him. Do you recall that?

15:27:55 17 A. Yes.

15:27:56 18 Q. Do you believe the information that Mr. Kramer  
15:28:00 19 provides is accurate?

15:28:02 20 A. I take it with a grain of salt, he provides a lot of  
15:28:06 21 information, it doesn't say who it's from, it says reliable  
15:28:10 22 sources, I really look at it as kind of a general overview  
15:28:14 23 of what is happening in the market from a supply and demand  
15:28:18 24 at a high level. It doesn't even give me prices specific to  
15:28:22 25 a customer.

Hines - cross

15:28:23 1 Q. Do you use the pricing information that you receive  
15:28:26 2 from Mr. Kramer, such as an e-mail that you talked about in  
15:28:30 3 making any pricing decisions for specific customers?

15:28:34 4 A. No, because we have to follow whatever the raw  
15:28:37 5 pricing is at that time and we have a formula that we have  
15:28:42 6 to use, plus our margin which we do have a range of a top  
15:28:46 7 and a bottom and we will not go below that bottom and any  
15:28:49 8 other differential cost to make the specific product, so we  
15:28:51 9 have to follow our pricing model.

15:29:01 10 Q. What is a BYA?

15:29:03 11 A. It's a buying agreement.

15:29:07 12 Q. Do BYA spreadsheets contain a cell in them labeled  
15:29:12 13 competition?

15:29:13 14 A. There is one there, yes.

15:29:15 15 Q. And who at Imperial ever fills in that cell?

15:29:18 16 A. None of the salespeople fill it in other than Beth  
15:29:23 17 Smith. And when I have asked her about it in the past she's  
15:29:26 18 not even sure if she updates it for each different  
15:29:30 19 spreadsheets she uses.

15:29:32 20 Q. Do you use the information in that cell labeled  
15:29:35 21 competition for any purpose in the ordinary course of  
15:29:38 22 business?

15:29:38 23 A. No.

15:29:39 24 Q. Does the information contained in that cell identify  
15:29:42 25 all of the competitive options that a customer might have

Hines - redirect

15:29:47 1 who is the focus of the BYA document?

15:29:49 2 A. No.

15:29:56 3 MR. ZACH: I have no more questions.

15:29:58 4 THE COURT: Thank you.

15:29:59 5 Redirect, Mr. Hanna

15:30:03 6 REDIRECT EXAMINATION

15:30:05 7 BY MR. HANNA:

15:30:12 8 Q. Counsel asked you some questions and you rattled off  
15:30:16 9 some competitors, do you recall that?

15:30:18 10 A. Yes.

15:30:18 11 Q. Do you recall, I walked you through some of your  
15:30:20 12 e-mails, right?

15:30:21 13 A. Yes.

15:30:21 14 Q. One of those e-mails was about a Wytheville, Virginia  
15:30:25 15 facility for Pepsi.

15:30:26 16 A. Yes.

15:30:26 17 Q. And the only two competitors you mentioned in this  
15:30:28 18 e-mail was Domino and United Sugar?

15:30:31 19 A. That was at that time, yes.

15:30:34 20 Q. You mentioned about a range of margin that Imperial  
15:30:38 21 had, right?

15:30:38 22 A. Yes, we do.

15:30:38 23 Q. That means you negotiate with customers within that  
15:30:42 24 range, right?

15:30:42 25 A. If we're given approval to do so, yes.



Hines - redirect

- 15:30:46 1 Q. What does margin mean?
- 15:30:48 2 A. It's the profit you're making on the item.
- 15:30:51 3 Q. Okay. Now, earlier you talk about Costco's business,
- 15:30:58 4 do you remember that?
- 15:30:58 5 A. Yes.
- 15:30:59 6 Q. Imperial supplies Costco's northeast division, right?
- 15:31:03 7 A. Yes, we supplied their 10 pound for years.
- 15:31:05 8 Q. And you said that the northeast division covers
- 15:31:09 9 Delaware, right?
- 15:31:10 10 A. Yes.
- 15:31:10 11 Q. So if I went to Costco in Christiana, Delaware which
- 15:31:14 12 is outside of Wilmington, I would find Imperial sugar there?
- 15:31:18 13 A. I would think you would find Imperial 10 pound, I
- 15:31:21 14 don't know right off the bat.
- 15:31:23 15 Q. You would find it in a Costco in Delaware, right?
- 15:31:26 16 A. If it's in that group, yes.
- 15:31:28 17 Q. All right. Your counsel showed you DTX 516, a
- 15:31:34 18 summary of Imperial's sales, do you recall that?
- 15:31:36 19 A. Yes.
- 15:31:38 20 Q. And if we could pull it up. I don't know counsel if
- 15:31:42 21 you have it, DTX 516. Do you have it available. Ms. Hines,
- 15:31:52 22 DTX 516, do you see it?
- 15:31:52 23 A. Yes.
- 15:31:52 24 Q. Do you see Delaware?
- 15:31:52 25 A. Yes, I do.

Hines - redirect

15:31:59 1 Q. There is one customer listed there, right?

15:32:01 2 A. Yes.

15:32:02 3 Q. And you have more than one customer in Delaware,  
15:32:05 4 right?

15:32:05 5 A. It depends, I would have to go back and look at on  
15:32:09 6 the Dover, Delaware could actually be in that store but the  
15:32:12 7 warehouse could actually be -- there is one in Monroe  
15:32:16 8 Township and one other so it wouldn't show up in the  
15:32:19 9 Delaware numbers as ordered in.

15:32:21 10 Q. Let me ask you a question. You have Imperial does  
15:32:24 11 sell sugar also to Kraft in Dover, Delaware, right?

15:32:28 12 A. Yes.

15:32:28 13 Q. And that's one customer, right?

15:32:29 14 A. Yes.

15:32:30 15 Q. And you also sell to Costco's northeast division that  
15:32:34 16 also delivers into Delaware, right?

15:32:36 17 A. But the warehouse is not in Delaware for Costco.  
15:32:40 18 It's in Maryland, and New Jersey, so we don't deliver to  
15:32:44 19 Delaware.

15:32:46 20 Q. So that sale would be Maryland or New Jersey, but  
15:32:50 21 those sales would go to Costco Delaware, right?

15:32:52 22 A. Yes.

15:32:53 23 MR. HANNA: No further questions.

15:32:54 24 THE COURT: Thank you. Okay.

15:32:55 25 THE WITNESS: Am I done?

Henneberry - direct

15:32:58 1 THE COURT: Thank you. You are excused.

15:33:01 2 What's next?

15:33:08 3 MR. HANNA: Your Honor, apologize, I was  
15:33:11 4 informed, I think I did not move to admit PTX 164. I ask  
15:33:17 5 that it be admitted at this time.

15:33:21 6 THE COURT: Any objection to PTX 164?

15:33:25 7 MR. ZACH: Thank you. No objection.

15:33:27 8 THE COURT: Thank you.

15:33:27 9 (PTX Exhibit No. 164 was admitted into  
15:33:28 10 evidence.)

15:33:28 11 MS. GARRETT: Good afternoon, Your Honor.  
15:33:34 12 Jenigh Garrett for the United States. Your Honor, may we  
15:33:37 13 proceed with the next witness? Your Honor, the United  
15:33:40 14 States calls Patrick Henneberry as an adverse witness.  
15:33:45 15 Mr. Henneberry is Senior Vice President for Refined Sugar  
15:33:46 16 Marketing and Business Development for Imperial Sugar  
15:33:50 17 Company.

15:34:16 18 COURT CLERK: Please raise your right hand.  
15:34:19 19 Please state and spell your name for the record.

15:34:21 20 THE WITNESS: Patrick Henneberry, P-A-T-R-I-C-K,  
15:34:22 21 H-E-N-N-E-B-E-R-R-Y.

15:34:40 22 DIRECT EXAMINATION

15:34:40 23 BY MS. GARRETT:

15:34:42 24 Q. Good afternoon, Mr. Henneberry.

15:34:42 25 A. Good afternoon.

Henneberry - direct

15:34:51 1 MS. GARRETT: Permission to proceed?

15:34:52 2 THE COURT: Yes, please.

15:34:52 3 BY MS. GARRETT:

15:34:54 4 Q. Mr. Henneberry, you have worked in the sugar industry  
15:34:56 5 for about thirty years or more, right?

15:34:58 6 A. Yes, since 1979.

15:35:01 7 Q. And currently you are the senior vice-president for  
15:35:04 8 refined sugar marketing and business development for  
15:35:09 9 Imperial Sugar Company; correct?

15:35:11 10 A. That's correct.

15:35:11 11 Q. You worked for Imperial before LDC acquired the  
15:35:17 12 company, right?

15:35:17 13 A. Yes, I did.

15:35:19 14 Q. And you first came to Imperial in 2002; is that  
15:35:22 15 right?

15:35:22 16 A. That's correct.

15:35:23 17 Q. As senior vice-president, you supervise the sales  
15:35:27 18 team, correct?

15:35:28 19 A. I oversee the sales team, and Jeana Hines directly  
15:35:32 20 supervises.

15:35:34 21 Q. And you supervise Jeana Hines?

15:35:37 22 A. Yes, I do.

15:35:37 23 Q. Now, you also manage Imperial's day to day pricing?

15:35:42 24 A. Yes I do.

15:35:42 25 Q. And one of your responsibilities is to give the sales

Henneberry - direct

15:35:46 1 team the price they can offer to a potential customer,  
15:35:49 2 right?

15:35:50 3 A. That's correct.

15:35:51 4 Q. The sales team asks for prices by submitting a quote  
15:35:57 5 request, right?

15:35:58 6 A. Yes, that's the process.

15:36:01 7 Q. You also try to make sure Imperial's pricing is  
15:36:05 8 consistent with what you believe is going on in the market  
15:36:09 9 competitively, correct?

15:36:10 10 A. I do.

15:36:12 11 Q. I would like to discuss the process that a buyer  
15:36:14 12 would have when purchasing sugar from Imperial for a second.  
15:36:20 13 Now, Imperial competes to supply customers of refined sugar;  
15:36:25 14 right?

15:36:25 15 A. Yes, we do.

15:36:26 16 Q. And some of Imperial's customers may stay with  
15:36:31 17 Imperial because Imperial has the better price; right?

15:36:34 18 A. Among other factors, yes.

15:36:37 19 Q. Well, some of the other reasons, other than price,  
15:36:39 20 that a customer may choose Imperial is the quality of  
15:36:42 21 Imperial sugar, right?

15:36:42 22 A. That's one of the factors.

15:36:43 23 Q. The granulation Imperial offers is a reason, other  
15:36:50 24 than price, that Imperial wins business, correct?

15:36:52 25 A. From time to time, yes.

Henneberry - direct

15:36:57 1 Q. Granulation means the size of the sugar, right?

15:37:01 2 A. That's correct.

15:37:02 3 Q. Timely delivery is another reason besides price that  
15:37:07 4 Imperial wins business, right?

15:37:09 5 A. That's correct.

15:37:10 6 Q. Timely delivery is part of reliable customer service,  
15:37:16 7 correct?

15:37:16 8 A. Yes, among other factors, yes.

15:37:18 9 Q. Well, it's true that reliable customer service is  
15:37:21 10 another way Imperial competes with other refined sugar  
15:37:25 11 suppliers; is that right?

15:37:26 12 A. That's correct.

15:37:27 13 Q. I would like to discuss how customers receive the  
15:37:31 14 sugar they buy. When a customer wants their sugar  
15:37:36 15 delivered, Imperial provides a delivered price; right?

15:37:39 16 A. Yes, generally.

15:37:41 17 Q. And the delivered price includes freight charges,  
15:37:45 18 right?

15:37:45 19 A. Yes, it does.

15:37:49 20 Q. The freight charge can vary based on where the  
15:37:52 21 customer wants the sugar delivered right?

15:37:52 22 A. By where the customer wants it delivered, and the  
15:37:56 23 form of the sugar and other factors, yes.

15:37:59 24 Q. Could you please turn to PTX 163 in your binder.

15:38:02 25 MS. GARRETT: Your Honor, PTX 163 has already

Henneberry - direct

15:38:08 1       been admitted.

15:38:11 2                   THE COURT:   Great.   Thank you.

15:38:12 3       BY MS. GARRETT:

15:38:13 4       Q.       PTX 163 is a jabber chat between you and Jeana Hines,  
15:38:18 5       correct?

15:38:18 6       A.       That's correct.

15:38:18 7       Q.       And jabber is a type of instant messaging or chat  
15:38:24 8       program that you have used, right?

15:38:25 9       A.       Yes, it is.

15:38:26 10      Q.       And instant messaging is one way that you communicate  
15:38:31 11      with the sales team in your day-to-day business, right?

15:38:31 12      A.       Yes, that's correct.

15:38:34 13      Q.       Now, I would just like to look at the second page of  
15:38:41 14      PTX 163 if we could put that up.   Now, I would like to draw  
15:38:50 15      your attention to -- I would like to draw your attention to  
15:38:57 16      the language right under your name there, you should be able  
15:39:01 17      to see that.   Imperial has a locational advantage in  
15:39:06 18      Georgia, right?

15:39:10 19      A.       We have a locational advantage in some cases as to  
15:39:14 20      the distance to the customer, but it's not often decisive.

15:39:21 21      Q.       So Imperial has a locational advantage with its  
15:39:25 22      location in Georgia, right?

15:39:26 23      A.       Yes, we have a distance advantage which is often  
15:39:31 24      overridden by other factors.

15:39:32 25      Q.       Thank you.   We can put that exhibit away.

Henneberry - direct

15:39:36 1 Now, in the past, Imperial has undercut its  
15:39:41 2 competitor's price; correct?

15:39:43 3 A. From time to time, we sell cheaper than others and  
15:39:48 4 win business that way, yes.

15:39:50 5 Q. When Imperial has undercut its competitors on price  
15:39:53 6 in the past, it has brought down the market price of sugar,  
15:39:57 7 correct?

15:39:58 8 A. We have -- sometimes we are selling into a downward  
15:40:02 9 moving market, but just because you're selling at a cheaper  
15:40:13 10 price doesn't mean you're moving the market down.

15:40:14 11 Q. And, but sometimes Imperial has brought down the  
15:40:20 12 market price of sugar with its lower price, right?

15:40:23 13 A. Sometimes, that prices declining are one of the main  
15:40:29 14 ways we are able to bring down prices.

15:40:31 15 Q. When a customer awards its business to Imperial, the  
15:40:34 16 salesperson records the details of the sale on a  
15:40:37 17 spreadsheet, right?

15:40:38 18 A. Yes, that's correct.

15:40:39 19 Q. And the spreadsheet the salesperson completes is  
15:40:42 20 called a buying agreement request?

15:40:42 21 A. The buying agreement basically means the contract and  
15:40:42 22 the spreadsheet is the form that's filled out to get that  
15:40:52 23 contract into the system.

15:40:54 24 Q. And sometimes a buying agreement request is referred  
15:40:55 25 to as a BYA, right?



Henneberry - direct

15:41:01 1 A. That's correct.

15:41:02 2 Q. The salesperson submits the BYA to the pricing group,  
15:41:06 3 right?

15:41:06 4 A. Yes.

15:41:08 5 Q. And Imperial's pricing group receives the e-mail sent  
15:41:13 6 to SGL-PricingAdmin@LDC.com, right?

15:41:19 7 A. That's right.

15:41:20 8 Q. You also receive e-mails sent to  
15:41:27 9 SGL-PricingAdmin@ldc.com?

15:41:27 10 A. Yes, I do.

15:41:28 11 Q. After the BYA request goes to pricing it's entered  
15:41:32 12 into Imperial's internal system, right?

15:41:34 13 A. That's right.

15:41:35 14 Q. Imperial then again creates the contract you  
15:41:38 15 mentioned for the customer identified in the BYA, right?

15:41:42 16 A. Right.

15:41:43 17 Q. Could you please turn to PTX 150 in your binder.

15:41:44 18 A. Okay.

15:41:50 19 Q. PTX 150 is an e-mail attaching a buying agreement  
15:41:52 20 request, right?

15:41:52 21 A. That's correct.

15:41:52 22 Q. And the e-mail dated here is August 28th -- is  
15:42:10 23 September 10th, 2019, correct?

15:42:12 24 A. That's right.

15:42:12 25 Q. And you're copied on this e-mail as well, right?

Henneberry - direct

15:42:15 1 A. Yes.

15:42:16 2 MS. GARRETT: Your Honor, plaintiffs move to  
15:42:18 3 admit PTX 150.

15:42:20 4 MR. ZACH: No objection, Your Honor.

15:42:21 5 THE COURT: Thank you. It's admitted.

15:42:24 6 (PTX Exhibit No. 150 was admitted into  
15:42:24 7 evidence.)

15:42:24 8 The Court: Any we publish, any time it's  
15:42:27 9 admitted, you don't have to ask. It's better to ask.

15:42:34 10 BY MS. GARRETT:

15:42:34 11 Q. Now, this e-mail is to that SGL pricing admin e-mail  
15:42:41 12 address we just discussed, right?

15:42:42 13 A. Yes.

15:42:43 14 Q. This sender is Beth Smith, she's a sales associate at  
15:42:48 15 Imperial?

15:42:49 16 A. That's right.

15:42:50 17 Q. Attached to the e-mail, this is the third page in PTX  
15:42:54 18 150, is a PDF of a completed buying agreement request for  
15:42:59 19 Bud's Best Cookies.

15:43:00 20 A. That's right.

15:43:02 21 Q. Let's turn to the fourth page of PTX 150, it's the  
15:43:09 22 second page of the BYA. The buying agreement request  
15:43:13 23 records the type of product that the customer purchases,  
15:43:17 24 right?

15:43:17 25 A. Yes, it does.

Henneberry - direct

15:43:18 1 Q. And the product in this buying agreement request is  
15:43:23 2 bulk sugar, right?

15:43:24 3 A. That's right.

15:43:24 4 Q. And the buying agreement request includes a field to  
15:43:29 5 record how the sugar is delivered to the customer; right?

15:43:34 6 A. In this case it says bulk truck.

15:43:37 7 Q. And there is also the field right there the ship, via  
15:43:42 8 freight term field, do you see that to the left of the  
15:43:46 9 product field?

15:43:46 10 A. Yes, I do.

15:43:47 11 Q. And there its also recorded that it's by truck,  
15:43:50 12 correct?

15:43:50 13 A. Yes.

15:43:51 14 Q. Now, you rely on your salespeople to provide accurate  
15:43:56 15 information when they complete the buying agreement request,  
15:44:00 16 right?

15:44:00 17 A. That's correct.

15:44:00 18 Q. Could we move to the first page. I would like to  
15:44:04 19 draw your attention to the right side of the page. Now the  
15:44:09 20 BYA has a field to record whether the customer accepts beet  
15:44:12 21 sugar; correct?

15:44:12 22 A. That's correct.

15:44:12 23 Q. And some customers do not accept beet sugar, right?

15:44:22 24 A. That's correct.

15:44:22 25 Q. Beet sugar is genetically modified, right?

Henneberry - direct

15:44:27 1 A. Yes, it is in the U.S.

15:44:28 2 Q. The buying agreement request also includes a field to  
15:44:33 3 record whether sugar from Mexico is allowed, for that  
15:44:38 4 particular customer; right?

15:44:40 5 A. Yes.

15:44:42 6 Q. And it's true, that customers with very specific  
15:44:46 7 quality control requirements, need to know where their sugar  
15:44:49 8 is manufactured, right?

15:44:51 9 A. Most customers want to pass off on the plants and  
15:44:55 10 inspect the plants for the sugar they're using just to make  
15:45:01 11 sure they're happy with our processes and confident selling  
15:45:04 12 their own product, yes.

15:45:06 13 Q. So for those customers that have those quality  
15:45:09 14 controls, they want to see where their sugar is refined,  
15:45:12 15 right?

15:45:12 16 A. That's right.

15:45:13 17 Q. I would like to draw your attention to the left side  
15:45:15 18 of the page. Now, PTX 150 records a 2019 date for the Bud's  
15:45:21 19 Best Cookies contract, right?

15:45:22 20 A. That is right.

15:45:22 21 Q. And PTX 150 also records United as the competition  
15:45:31 22 for Bud's Best Cookies, right?

15:45:32 23 A. It does.

15:45:34 24 Q. We're going to be finished with PTX 150 for now and I  
15:45:38 25 would like to move to PTX 192. Let me know when you're

Henneberry - direct

15:45:49 1       there.

15:45:51 2       A.       Okay.

15:45:52 3       Q.       PTX 192 is an April 22nd, 2021, e-mail to that same  
15:46:01 4       SGL Pricing e-mail address, correct?

15:46:04 5       A.       That's right.

15:46:05 6               MS. GARRETT: Your Honor, plaintiffs would like  
15:46:07 7       to move to admit PTX 192 into evidence.

15:46:11 8               THE COURT: Might be objection?

15:46:12 9               MR. ZACH: No objection.

15:46:12 10              THE COURT: All right. Thank you. It's  
15:46:14 11       admitted.

15:46:15 12              (PTX Exhibit No. 192 was admitted into  
15:46:15 13       evidence.)

15:46:15 14       BY MS. GARRETT:

15:46:16 15       Q.       Can you please turn to the fourth page of PTX 192, it  
15:46:20 16       is the second page of the buying agreement request. And  
15:46:23 17       just let me know when you're there?

15:46:25 18       A.       I'm there.

15:46:26 19       Q.       Now this product delivered in PTX 192 was liquid  
15:46:31 20       sucrose, right?

15:46:32 21       A.       That's correct.

15:46:32 22       Q.       Can we go back to the first page of the buying  
15:46:32 23       agreement request. The contract, now the contract in PTX  
15:46:42 24       192 is a spot contract; right? If you look over on the left  
15:46:52 25       side of the page right there.

Henneberry - direct

15:46:55 1 A. Yes. It is, yes.

15:46:58 2 Q. Okay. And the contract period, if I take your  
15:47:01 3 attention to the right side of the page there, is from  
15:47:05 4 April 22nd through April 30th, 2021; correct?

15:47:10 5 A. That's right.

15:47:11 6 Q. So back to the left side of the page, PTX 192 records  
15:47:17 7 a 2021 date for the Helm's Candy contract right?

15:47:24 8 A. That's right.

15:47:24 9 Q. And PTX 192 also records Domino and United as the  
15:47:29 10 competition for the Helm's Candy spot contract, right?

15:47:34 11 A. It does.

15:47:34 12 Q. And we're finished with PTX 192.

15:47:38 13 I would like to ask you to turn to PTX 94. And  
15:47:45 14 if you could let me know when you're there.

15:47:48 15 A. Okay.

15:47:48 16 Q. And PTX 94 is a July 27th, 2018, e-mail sent to that  
15:47:55 17 same SGL Pricing e-mail address right?

15:47:59 18 A. That's right.

15:48:01 19 MS. GARRETT: Your Honor, plaintiffs move to  
15:48:02 20 admit PTX 94.

15:48:04 21 MR. ZACH: No objection, Your Honor.

15:48:05 22 THE COURT: All right. It's admitted.

15:48:05 23 (PTX Exhibit No. 94 was admitted into evidence.)

15:48:05 24 BY MS. GARRETT:

15:48:07 25 Q. And PTX 94 attaches a buying agreement request,

Henneberry - direct

15:48:12 1 correct, for Hospitality Mints, that should be the third  
15:48:18 2 page of PTX 94?

15:48:20 3 A. Yes, it does.

15:48:21 4 Q. And I would just like to keep our attention on first  
15:48:24 5 page there. This is a 2018 contract for Hospitality Mints;  
15:48:29 6 is that right?

15:48:30 7 A. Yes, it is.

15:48:30 8 Q. And the competition recorded on the buying agreement  
15:48:34 9 request is United, correct?

15:48:36 10 A. That's correct.

15:48:37 11 Q. I need to also look at the contract period, PTX 94 on  
15:48:42 12 the right side, it records both volume and the time for  
15:48:50 13 which the customer is going to receive the sugar. Is that  
15:48:54 14 right?

15:48:54 15 A. That's correct.

15:49:00 16 Q. Thank you. We can put PTX 94 to the side now.

15:49:04 17 Mr. Henneberry, I'm going to switch gears for a  
15:49:09 18 second. I would like to briefly discuss pricing decisions.  
15:49:15 19 There are some pricing decisions you discuss with Imperial's  
15:49:18 20 CEO Mike Gorrell?

15:49:21 21 A. Yes.

15:49:22 22 Q. One of the ways you communicate with Mr. Gorrell is  
15:49:25 23 by e-mail, correct?

15:49:26 24 A. That's correct.

15:49:27 25 Q. Mr. Henneberry, could you please turn to PTX 250 of

Henneberry - direct

15:49:32 1 your binder. And let me know when you're there.

15:49:35 2 A. I'm there.

15:49:36 3 Q. PTX 250 is a series of e-mails between you and  
15:49:41 4 Mr. Gorrell in June 2018, right?

15:49:44 5 A. Yes, that's correct.

15:49:45 6 Q. And you are discussing a potential pricing decision  
15:49:49 7 with Mr. Gorrell, is that right?

15:49:52 8 A. That's right. We were discussing whether or not to  
15:49:55 9 sell to DCB.

15:49:59 10 MS. GARRETT: Plaintiffs would like to move PTX  
15:50:01 11 250 into evidence.

15:50:02 12 MR. ZACH: No objection, Your Honor.

15:50:03 13 THE COURT: Thank you. It's admitted.

15:50:03 14 (PTX Exhibit No. 250 was admitted into  
15:50:05 15 evidence.)

15:50:05 16 BY MS. GARRETT:

15:50:05 17 Q. Now the subject be line of the e-mail has the name of  
15:50:08 18 the company, correct?

15:50:09 19 A. That's right.

15:50:10 20 Q. And the company listed as DCB, right?

15:50:11 21 A. Yes, it is.

15:50:12 22 Q. And DCB refers to Diamond Crystal Brands, right?

15:50:20 23 A. That's correct.

15:50:21 24 Q. Diamond Crystal Brand is located in Savannah,  
15:50:25 25 Georgia, correct?



Henneberry - direct

15:50:26 1 A. That's right.

15:50:26 2 Q. And it's true that Diamond Crystal Brands takes in  
15:50:32 3 bulk sugar to produce sugar packets?

15:50:35 4 A. That's right.

15:50:35 5 Q. In 2018, you were competing with United for DCB's  
15:50:40 6 bulk business in Savannah, correct?

15:50:42 7 A. That's correct.

15:50:42 8 Q. While competing for the DCB bulk business you tried  
15:50:46 9 to estimate United's price right?

15:50:50 10 A. We tried to estimate United's price and no doubt  
15:50:54 11 others as well.

15:50:54 12 Q. Well, in this e-mail here, you were discussing  
15:50:57 13 estimating United's price, right?

15:51:00 14 A. That's correct.

15:51:00 15 Q. And you contemplated lowering Imperial's price  
15:51:05 16 40 points to get the DCB business for Imperial, right?

15:51:09 17 A. No, it's a contemplation, we don't know for sure what  
15:51:15 18 the price, we get some guidance, sometimes from buyers, we  
15:51:19 19 read the tea leaves, but that's what we're talking about  
15:51:22 20 here, what level should we be at.

15:51:22 21 Q. You're trying to make your best decision based on  
15:51:25 22 what you think might be happening in the market, right?

15:51:32 23 A. What's happening in the market and what we need to  
15:51:35 24 have for pricing to make our economics work for Imperial.

15:51:35 25 Q. But there were downsides to lowering Imperial's price

Henneberry - direct

15:51:42 1 to get the DCB business from United, right?

15:51:47 2 A. Yes, we were discussing that, we were seeing United's  
15:51:54 3 price starting to rise and that's a symptom of the market  
15:51:59 4 beginning to tighten. At the beginning of the year, USDA  
15:52:04 5 allocates sugar to the domestic grower/processors, unless  
15:52:09 6 they use up their allocation and they need to keep their  
15:52:12 7 sugar going out of the refinery.

15:52:15 8 Q. I'm sorry, Mr. Henneberry, I'm going to ask you to  
15:52:19 9 answer the question I ask. You'll have a chance when you  
15:52:21 10 talk to Mr. Zach to provide more context. There were  
15:52:21 11 downsides to lowering Imperial's price to get the DCB  
15:52:21 12 business from United, right?

15:52:31 13 A. There were a couple of potential downsides.

15:52:34 14 Q. But the main downside was snatching the DCB business  
15:52:37 15 from United, just as they we're raising their prices, right?

15:52:44 16 A. That's the way I phrase it is that basically, these  
15:52:48 17 kinds of businesses just tend to be important, because they  
15:52:52 18 process, because they're large volume bulk movements and if  
15:52:54 19 you take them, they can disrupt their marketing and further  
15:53:02 20 repercussions on ours.

15:53:02 21 Q. Well, we actually discussed this during your  
15:53:02 22 deposition. You feared that United might react to Imperial  
15:53:12 23 lowering its price by cutting the United prices to other  
15:53:12 24 customers going forward, right?

15:53:12 25 A. Right. The domestic processors need to sell their

Henneberry - cross

15:53:22 1 allocation so --

15:53:24 2 THE COURT: You can answer yes or no and then  
15:53:26 3 give a brief explanation, but you need to get nearer to a  
15:53:29 4 microphone because you're soft sounding and making it hard  
15:53:37 5 for my court reporter.

15:53:38 6 THE WITNESS: Sorry.

15:53:39 7 Q. And you also felt that Imperial lowering its price to  
15:53:44 8 obtain the DCB business from United could awaken a sleeping  
15:53:48 9 giant, right?

15:53:48 10 A. I think I said that in my deposition, yes.

15:53:51 11 MS. GARRETT: Thank you. The United States  
15:53:53 12 passes the witness, Your Honor.

15:53:55 13 THE COURT: Thank you.

15:54:11 14 MR. ZACH: Thank you. May I proceed?

15:54:14 15 THE COURT: Please.

15:54:15 16 CROSS-EXAMINATION

15:54:15 17 BY MR. ZACH:

15:54:15 18 Q. Good afternoon, Mr. Henneberry.

15:54:17 19 A. Good afternoon.

15:54:18 20 Q. What are the components that go into the delivered  
15:54:22 21 price for refined sugar that Imperial sets for customers?

15:54:30 22 A. The biggest component is raw sugar, about 80 percent  
15:54:33 23 of the price at the moment is raw sugar costs. We also then  
15:54:37 24 have a charge for refining the sugar, we have packaging  
15:54:42 25 expenses, the labor and energy that goes into the refining

Henneberry - cross

15:54:46 1 process, we may convert the sugar to granulated white sugar  
15:54:50 2 into brown sugar or powdered sugar. There is a charge for  
15:54:55 3 that. We may finance the purchase of the sugar with the  
15:54:58 4 final customer and also there is the transportation to  
15:55:00 5 deliver it to the end user's facility.

15:55:04 6 Q. And does Imperial buy imported raw sugar or is it  
15:55:09 7 domestically sourced raw sugar?

15:55:11 8 A. Predominantly we import raw sugar, probably over  
15:55:17 9 90 percent, over the years there is a little bit of domestic  
15:55:21 10 sugar that spills over to us, but it's not common.

15:55:23 11 Q. How do other sellers of refined sugar retain --  
15:55:28 12 strike that.

15:55:29 13 How do other sellers of refined sugar get access  
15:55:32 14 to their raw sugar?

15:55:34 15 A. Well, beets and cane are many of them, are  
15:55:39 16 cooperatives that are owned by the growers and they process  
15:55:42 17 all the sugar that the growers provide them most years. And  
15:55:46 18 others have contractual relationship with the plants that  
15:55:51 19 are very near to the refineries in Louisiana and Florida.

15:55:52 20 Q. Now, talking about the imports that Imperial buys,  
15:56:00 21 how are prices for imported raw sugar set?

15:56:02 22 A. It's a regulated market by the USDA, but within those  
15:56:08 23 regulations is a set forward market of physical sugar  
15:56:14 24 amongst traders to us directly and by the intercontinental  
15:56:18 25 exchanges, number 16 future contract which is for domestic

Henneberry - cross

15:56:23 1 raw sugar.

15:56:24 2 Q. What's the range of raw sugar costs that you have  
15:56:28 3 seen over say, the last five years?

15:56:30 4 A. Over the last five years we have probably seen prices  
15:56:33 5 from, on the low side, \$0.25 1/2 to say \$0.28 a pound that  
15:56:39 6 are more or less in line with the Mexican suspension  
15:56:43 7 agreements to support the market, and recently we have seen  
15:56:47 8 prices as high as \$0.39 a pound last fall and we're  
15:56:51 9 currently right around \$0.37 a pound. \$0.36, \$0.37 a pound.

15:56:54 10 Q. How do Imperial's raw sugar costs compare to the  
15:57:01 11 costs incurred by suppliers of domestic raw sugar?

15:57:04 12 A. It's difficult to know exactly, but over the last six  
15:57:09 13 to eight months, we have seen instances where the refined  
15:57:14 14 sugar price offered by our grower competitors is lower than  
15:57:19 15 our raw sugar costs.

15:57:19 16 Q. Have you heard of the term residual supplier?

15:57:23 17 A. Yes, I have.

15:57:24 18 Q. What does that term mean?

15:57:25 19 A. Residual supplier refers to imported raw sugar being  
15:57:30 20 a residual in the market. Each year the USDA sets  
15:57:34 21 85 percent of the market for the domestic processors and  
15:57:38 22 allocates sugar to each one of them to sell and the balance  
15:57:42 23 of 15% is for imported raw sugar.

15:57:44 24 Q. Is Imperial a residual supplier?

15:57:48 25 A. Yes.

Henneberry - cross

15:57:49 1 Q. How does being a residual supplier affect the type of  
15:57:52 2 business that Imperial gets relative to suppliers with  
15:57:54 3 domestic sources?

15:57:55 4 A. It affects the overall quantity because in a year  
15:57:59 5 with a big domestic crop the amount of imported sugar is  
15:58:04 6 small, and vice versa. Its sets our volumes to start with  
15:58:08 7 but also we tend to be relegated to a period of time they  
15:58:12 8 sell the sugar quickly at the beginning of the year so that  
15:58:15 9 they can both fulfill their marketing allocation and keep  
15:58:18 10 the sugar moving so it's out of the way of the refinery.  
15:58:21 11 And then we're relegated to waiting until the market prices  
15:58:24 12 in the imported raw sugar prices, and whatever is left to  
15:58:30 13 sell at that point.

15:58:31 14 Q. Just so the record is clear, when you say they sell  
15:58:34 15 at the beginning of the year, you're referring to suppliers  
15:58:36 16 who have access to domestic sources of raw sugar?

15:58:40 17 A. Yes, that's correct.

15:58:41 18 Q. Is there a particular window of time when Imperial  
15:58:44 19 makes most of its refined sugar sales?

15:58:46 20 A. We typically sell our sugar from the late summer to  
15:58:50 21 early fall.

15:58:51 22 Q. Have you heard of the term backup supplier?

15:58:53 23 A. Yes, I have.

15:58:54 24 Q. What is that?

15:58:56 25 A. The backup supplier refers to the desire of a

Henneberry - cross

15:58:57 1 customer to ensure continuity of supply. So hurricanes come  
15:59:02 2 through and some refiners may be put out for a period of  
15:59:05 3 time for that, or you can't find trucks for a certain period  
15:59:09 4 of time, so it's always good to have another supplier who  
15:59:12 5 may be able to stand in from a slightly different area to  
15:59:16 6 make sure you have the continuity of supply.

15:59:19 7 Q. Does Imperial serve as a backup supply for any  
15:59:23 8 customers?

15:59:23 9 A. Yes, we do.

15:59:24 10 Q. Can you give me some examples?

15:59:25 11 A. There are many of them, General Mills and ConAgra we  
15:59:29 12 tend to be back up suppliers there, Mars and Hershey from  
15:59:33 13 time to time, necessarily and perhaps many others.

15:59:35 14 Q. I would like to talk for a moment about the other  
15:59:38 15 components that make up Imperial's prices. What is the  
15:59:41 16 relative importance of freight costs in comprising the  
15:59:44 17 overall price that you set for a customer?

15:59:48 18 A. Compared to raw sugar, it's relatively small.  
15:59:52 19 Freight costs are probably around five percent of your  
15:59:56 20 common deliveries and maybe up to ten percent for extending  
16:00:00 21 pushing sugar through a station.

16:00:01 22 Q. Where does Imperial sell refined sugar?

16:00:05 23 A. We sell pretty much all over the country from Maine  
16:00:07 24 to Texas and Chicago to Florida, we occasionally sell  
16:00:12 25 outside of that range and I think we sell in over 40

Henneberry - cross

16:00:17 1 different states.

16:00:17 2 Q. Does Imperial use transfer stations?

16:00:21 3 A. Yes, we do.

16:00:22 4 Q. What is a transfer station?

16:00:23 5 A. A transfer station is a facility generally on a rail  
16:00:27 6 line where you take in bulk railcars of refined sugar and  
16:00:31 7 they're able to break it down to make liquid sugar out of it  
16:00:34 8 and put it in liquid truck for local delivery, or into a  
16:00:38 9 bulk truck. Some of them may do packaged goods or powdered  
16:00:43 10 sugar, breaking down bulk shipment to move cheaply into more  
16:00:48 11 difficult freight.

16:00:48 12 Q. How does using a transfer station impact  
16:00:52 13 transportation costs?

16:00:53 14 A. It generally keeps it lower for, because you can move  
16:00:57 15 long distance for bulk.

16:01:00 16 Q. Does Imperial always win customer business when it's  
16:01:03 17 the closest supplier?

16:01:05 18 A. No, we do not, DCB is eight miles from us and we  
16:01:14 19 compete with both beet and cane, we have seen beet sugar  
16:01:17 20 there from Idaho and Red River Valley and cane sugar there  
16:01:21 21 out of Florida today as well.

16:01:22 22 Q. Where is DCB located?

16:01:23 23 A. Eight miles away in Savannah, Georgia.

16:01:24 24 Q. And DCB came up in one of the e-mails that you talked  
16:01:32 25 about with plaintiffs's counsel?



Henneberry - cross

16:01:34 1 A. That's correct.

16:01:34 2 Q. That was referring to a customer that was located in  
16:01:37 3 the Savannah area?

16:01:39 4 A. Yes.

16:01:40 5 Q. And just to make sure the record is clear, does  
16:01:42 6 Imperial always win DCB business, despite it being right in  
16:01:49 7 the same town?

16:01:50 8 A. No, we have not had it far less than we have had it.

16:01:54 9 Q. Who are Imperial's competitors in your view?

16:01:57 10 A. Pretty much everyone who sells raw sugar in the  
16:02:00 11 country can be our competitor, we have seen beet sugar come  
16:02:04 12 into our backyard as I said from Idaho and Minnesota, we see  
16:02:08 13 beets coming into the stations in Chattanooga fairly often,  
16:02:13 14 Memphis competing with us over there, we see cane sugar as  
16:02:17 15 well from both Domino and LSR through the station in  
16:02:21 16 Chattanooga and directly into the southeast. There are  
16:02:31 17 customers in that area where sugars coming out of Florida  
16:02:35 18 and sort of coming out of New Orleans are more or less equal  
16:02:39 19 distances.

16:02:40 20 Q. Now, how are distributors, in your last answer I  
16:02:42 21 think you referred to raw sugar, but I think you may have  
16:02:54 22 meant refined sugar?

16:02:52 23 A. Yes, excuse me, refined sugar.

16:02:57 24 Q. Just so the record is clear, you mentioned that beets  
16:02:59 25 from Idaho came into Savannah. Do you know what company was

Henneberry - cross

16:03:03 1 selling to DCB in Savannah?

16:03:06 2 A. I believe it was NSM.

16:03:09 3 Q. You mentioned distributors in passing. How are  
16:03:12 4 distributors able to compete with Imperial even if they  
16:03:15 5 source their supplies from refiners?

16:03:17 6 A. Distributors some of them are the traders in the  
16:03:22 7 market, they'll buy sugar when prices are cheap in their  
16:03:26 8 view and hold them directly in their facility to sell them  
16:03:31 9 later in time when they believe prices may go up. We often  
16:03:35 10 see different customers competing with us with our own bags  
16:03:40 11 later in the year, selling them cheaper than we're currently  
16:03:44 12 selling them.

16:03:44 13 Q. Can you give me ideas of customers where you have  
16:03:47 14 seen distributors successfully competing to win the business  
16:03:50 15 against Imperial?

16:03:51 16 A. Yes, we have seen Saint Charles competed with us for  
16:03:57 17 McCall farms and offered them directly, we seen I C I do  
16:04:01 18 similar things with Sauer Brands just recently, we have seen  
16:04:07 19 distributors compete with us for Mars and General Mills out  
16:04:10 20 of Atlanta, ADM with McKee Foods putting beet sugar through  
16:04:17 21 their facility in Chattanooga.

16:04:21 22 Q. And plaintiff's counsel asked you about BYA. Do you  
16:04:25 23 recall that?

16:04:25 24 A. Yes, I do.

16:04:25 25 Q. What's your understanding of what a BYA is?

Henneberry - cross

16:04:28 1 A. BYA is a buying agreement, and the forms we were  
16:04:32 2 going over are the templates that are filled out by the  
16:04:36 3 salesperson to document what was sold, quantities, time  
16:04:41 4 period, pricing, for our own personal records, it records  
16:04:45 5 the raw sugar price and our refining charge and it has the  
16:04:50 6 freight for the final delivery.

16:04:51 7 Q. One of your responsibilities is setting prices for  
16:04:54 8 Imperial, is that right?

16:04:54 9 A. That's right.

16:04:55 10 Q. Do you ever use the information in the BYA forms as  
16:04:59 11 part of your responsibilities to set prices?

16:05:02 12 A. They're more of a recording of what we have already  
16:05:05 13 set. By the time they get there, the meeting is done, we  
16:05:09 14 have sold the sugar.

16:05:11 15 Q. Those BYA that you looked at, plaintiff's counsel  
16:05:14 16 didn't ask you about it, but there was a cell in that  
16:05:20 17 spreadsheet called competition. Did you see that when you  
16:05:23 18 were looking at the spreadsheet?

16:05:23 19 A. I did.

16:05:24 20 Q. Do you ever use the information in that competition  
16:05:27 21 field in the BYA for any business purpose?

16:05:29 22 A. I don't. In my deposition I was sort of surprised  
16:05:32 23 that we had it there. I didn't realize that we were  
16:05:35 24 recording that, but it's not really used there. We have  
16:05:38 25 other ways of tracking.

Henneberry - cross

16:05:45 1 Q. Plaintiff's counsel asked you briefly about a  
16:05:49 2 document, PTX 163 and a reference that you made to a  
16:05:55 3 locational advantage. Do you recall that?

16:05:59 4 A. Yes.

16:06:00 5 Q. What did you mean when you used the term locational  
16:06:03 6 advantage in that setting?

16:06:05 7 A. Well, relative to what we're trying to move where we  
16:06:11 8 are, the closer distance can be a locational advantage. As  
16:06:15 9 I said, there were many other factors that enter into it.  
16:06:19 10 Primary among them is the price at which the competing  
16:06:23 11 company is often selling their refined sugar on a FOB basis,  
16:06:27 12 we add the freight on, even when we're close and have a  
16:06:31 13 lower freight, we will still be unable to compete, DCB for  
16:06:35 14 example.

16:06:38 15 Q. Is it fair to say that having a locational advantage  
16:06:43 16 doesn't always put you in a position to win business?

16:06:47 17 A. That's for sure.

16:06:49 18 Q. Now, plaintiff's counsel asked you about a couple of  
16:06:54 19 specific BYAs that I want to briefly talk to you. First I  
16:06:58 20 wanted -- the first I want to address is PTX 145 is the BYA  
16:07:02 21 for Bud's Best. Do you recall that?

16:07:04 22 A. Yes, I do.

16:07:07 23 Q. Based on your experience, what --

16:07:09 24 MS. GARRETT: Objection. The Bud's Best BYA is  
16:07:12 25 PTX 150, I want to make sure the record is clear.

Henneberry - cross

16:07:14 1 MR. ZACH: Thank you. Appreciate that. I stand  
16:07:17 2 corrected.

16:07:17 3 BY MR. ZACH:

16:07:17 4 Q. PTX 150 was the BYA related to Bud's Best. Do you  
16:07:22 5 recall that?

16:07:22 6 A. I do.

16:07:23 7 Q. And based on your experience, what other suppliers  
16:07:27 8 could compete effectively for customers located where Bud's  
16:07:33 9 Best is located?

16:07:34 10 A. We have a couple of customers located near there,  
16:07:36 11 Bud's Best who we have sold once I believe and Milo's Tea  
16:07:40 12 where we sold once or twice just around the Birmingham area  
16:07:41 13 in Alabama. It's very close to the facility that ADM has in  
16:07:52 14 Chattanooga and that's a rail facility that can break down  
16:07:54 15 and produce whole trucks and they provided effective  
16:07:58 16 competition for we don't know. Beets or cane or others can  
16:08:02 17 go through there from time to time.

16:08:08 18 Q. Counsel also asked you about a BYA for Hospitality?

16:08:11 19 A. Yes, I do.

16:08:13 20 Q. I believe that was PTX 094.

16:08:17 21 Does Imperial still supply sugar to Hospitality?

16:08:19 22 A. I believe we do, yes.

16:08:22 23 Q. I'm sorry. You said you believe you do?

16:08:24 24 A. I believe we do, yes.

16:08:25 25 Q. During your examination, plaintiff's counsel

Henneberry - cross

16:08:32 1 discussed PX 250 which was an e-mail between you and Mike  
16:08:38 2 Gorrell in which he discussed possible pricing  
16:08:40 3 considerations relating to DCB. Do you remember that?

16:08:43 4 A. That's right.

16:08:44 5 Q. And do you remember what time of year that exchange  
16:08:47 6 was taking place?

16:08:48 7 A. That was taking place in June.

16:08:51 8 Q. And can you describe as a residual supplier what  
16:08:55 9 factors affect Imperial's strategy for a making potential  
16:08:59 10 sales to a customer like DCB in the early summer?

16:09:02 11 A. We're getting usually by that time of year, the  
16:09:06 12 domestic processors have had several months of selling and  
16:09:09 13 they're starting to get their crop well placed, clear  
16:09:13 14 enough, still not certain what the size of the crop is, so  
16:09:16 15 they begin to slow down generally knowing that they can  
16:09:19 16 probably meet their allocations and keep the factories clear  
16:09:22 17 of the sugar. So we're always sort of trying to read tea  
16:09:25 18 leaves and understand when is the market going to move up  
16:09:29 19 price in the refined, or the raw sugar from imported  
16:09:32 20 sources.

16:09:35 21 So what we're trying to figure out here in part  
16:09:39 22 is is this moment coming, is it coming to the moment where  
16:09:42 23 we can be able to actually begin selling effectively. And  
16:09:45 24 that's what we're trying to judge, and we want to price more  
16:09:49 25 aggressively to get it or will this come to us, we're still

Henneberry - redirect

16:10:02 1 trying to understand is the pricing.

16:10:03 2 Q. What was the ultimate outcome of the discussion

16:10:06 3 between you and Mr. Gorrell as of the --

16:10:08 4 A. We lowered our prices to try to compete.

16:10:12 5 Q. I'm sorry. Can you say it again?

16:10:14 6 A. We lowered our price to compete.

16:10:16 7 MR. ZACH: Thank you, Mr. Henneberry. I have no

16:10:18 8 more questions at this time.

16:10:21 9 THE COURT: Thank you. Redirect.

16:10:24 10 REDIRECT EXAMINATION

16:10:33 11 BY MS. GARRETT:

16:10:38 12 Q. Mr. Henneberry, Imperial competes to win customers,  
16:10:43 13 right?

16:10:43 14 A. Yes, we have plenty of competition out there.

16:10:47 15 Q. And Imperial wins customers, right?

16:10:51 16 A. We do.

16:10:51 17 Q. I would just like to take a minute to discuss how  
16:10:55 18 things might change from year to year. It is true that what  
16:11:00 19 happens in one year might not happen in the next; right?

16:11:03 20 A. Every year can have a different supply and demand  
16:11:07 21 situation, that's true.

16:11:10 22 MS. GARRETT: Thank you. No further questions.

16:11:12 23 THE COURT: All right. Thank you very much,  
16:11:13 24 sir. You are excused.

16:11:15 25 Let's take our fifteen-minute afternoon break.

S. Hines - direct

16:11:17 1 (A brief recess was taken.)

16:29:32 2 THE COURT: All right. Please be seated.

16:29:34 3 What's next?

16:29:35 4 MR. THORNBURGH: Good afternoon, Your Honor.

16:29:38 5 John Thornburgh from the United States. May we proceed with  
16:29:40 6 the next witness?

16:29:41 7 THE COURT: Please.

16:29:42 8 MR. THORNBURGH: At this time United States  
16:29:44 9 calls Steve Hines as an adverse party witness. Mr. Hines is  
16:29:46 10 the Vice President of Strategy at United Sugar and his  
16:29:50 11 testimony will be to competitive effects and purported  
16:29:52 12 efficiencies of the proposed transaction.

16:30:11 13 COURT CLERK: Please raise your right hand.  
16:30:14 14 Please state and spell your full name for the record.

16:30:17 15 THE WITNESS: My name is Steven John Hines.  
16:30:21 16 S-T-E-V-E-N, J-O-H-N, H-I-N-E-S.

16:30:24 17 STEVEN JOHN HINES, having been duly sworn was  
16:30:31 18 examined and testified as follows:

16:30:35 19 DIRECT EXAMINATION

16:30:37 20 BY MR. THORNBURGH:

16:30:42 21 Q. Good afternoon, Mr. Hines. I handed you a binder or  
16:30:44 22 my colleague did while you were on your way up to the  
16:30:47 23 witness box. We may refer to the binder during our time  
16:30:51 24 together, I will let you know if and when you need to refer  
16:30:54 25 to it.



S. Hines - direct

16:30:55 1 Mr. Hines, you are currently the vice-president  
16:30:57 2 of strategy at United Sugar, correct?

16:30:59 3 A. That is correct.

16:31:00 4 Q. And you have worked at United Sugars since 1995,  
16:31:03 5 right?

16:31:04 6 A. Yes, that's correct.

16:31:05 7 Q. And other than your first year at United, you have  
16:31:08 8 spent the rest of your tenure at the company focused on  
16:31:11 9 refined sugar, correct?

16:31:13 10 A. Yes.

16:31:13 11 Q. And besides Mr. Swart, it is your understanding that  
16:31:14 12 you are the longest tenured executive at the company,  
16:31:15 13 correct?

16:31:15 14 A. Yes.

16:31:20 15 Q. And as vice-president of strategy you report to  
16:31:21 16 Mr. Wineinger, the president and CEO of United?

16:31:21 17 A. Yes, that's correct.

16:31:21 18 Q. And your job responsibility as vice-president of  
16:31:30 19 strategy are focused on facilitating the strategic planning  
16:31:31 20 of the company, correct?

16:31:31 21 A. Yes.

16:31:31 22 Q. And Mr. Hines, in various points during your tenure  
16:31:40 23 at the company, you have worked on determining the most cost  
16:31:41 24 effective way to move sugar from United's facilities to the  
16:31:42 25 end customer, correct?

S. Hines - direct

16:31:49 1 A. Yes. That's correct.

16:31:50 2 Q. And that includes Mr. Hines helping United maximize  
16:31:54 3 its NSP or net sell price for the refined sugar products the  
16:31:59 4 company sells; correct?

16:32:00 5 A. Yes. Cost is one of the components of NSP.

16:32:05 6 Q. And Mr. Hines NSP or net selling price is the  
16:32:08 7 difference between the revenue that United takes in minus  
16:32:11 8 the company's cost, correct?

16:32:13 9 A. Yes.

16:32:14 10 Q. And Mr. Hines, United's aggregated NSP is the amount  
16:32:20 11 of money that is returned to United's member owners, right?

16:32:24 12 A. Yes, that's correct.

16:32:25 13 Q. And Mr. Hines, please turn to tab PTX 380 in your  
16:32:30 14 binder.

16:32:30 15 MR. THORNBURGH: This is Plaintiff's Exhibit 380  
16:32:33 16 is found there, Your Honor. This exhibit has already been  
16:32:35 17 admitted into evidence. Can I publish it?

16:32:37 18 THE COURT: Yes, absolutely.

16:32:39 19 MR. THORNBURGH: Thank you.

16:32:39 20 BY MR. THORNBURGH:

16:32:40 21 Q. Mr. Hines, you recognize this e-mail that you wrote,  
16:32:42 22 correct?

16:32:43 23 A. Yes, I do.

16:32:44 24 Q. And Mr. Hines, you wrote this e-mail on August 2018  
16:32:50 25 as United was exploring building a facility adjacent to the

S. Hines - direct

16:33:02 1 US Sugar refinery in Clewiston, Florida, right?

16:33:06 2 A. That's not entirely correct.

16:33:08 3 Q. What is not correct about that, sir?

16:33:11 4 A. We were looking at an alternative way to package  
16:33:21 5 sugar products for sales into the marketplace.

16:33:24 6 Q. And one of those options that you were looking at  
16:33:27 7 Mr. Hines was exploring building a facility adjacent to the  
16:33:31 8 US Sugar refinery in Clewiston, correct?

16:33:34 9 A. Yes.

16:33:34 10 Q. And Mr. Hines, United was exploring the possibility  
16:33:37 11 of building this new facility because packaging capacity at  
16:33:41 12 the Clewiston refinery is limited, correct?

16:33:44 13 A. Yes.

16:33:45 14 Q. And United has not expanded packaging capacity at the  
16:33:50 15 Clewiston refinery since you wrote this e-mail in  
16:33:53 16 August 2018, correct?

16:33:54 17 A. That's correct.

16:33:54 18 Q. And at the time, Mr. Hines, United was interested in  
16:33:59 19 expanding its sales of certain refined sugar products that  
16:34:03 20 had better margins than sales of bulk refined sugar,  
16:34:07 21 correct?

16:34:07 22 A. Yes, that's correct.

16:34:08 23 Q. I want to zoom in here on the bottom of your e-mail,  
16:34:12 24 please. In this e-mail you wrote after a conversation with  
16:34:15 25 Bob Buker, Matt would like us to identify a potential

S. Hines - direct

16:34:22 1 contribution of a base case facility. Did I read that  
16:34:25 2 correctly?

16:34:25 3 A. Yes.

16:34:25 4 Q. And Matt here refers to your boss and the president  
16:34:28 5 of United, Matt Wineinger, correct?

16:34:31 6 A. Yes.

16:34:32 7 Q. And then the first bullet down reads using the  
16:34:35 8 40-acre site adjacent to Clewiston's property. That's where  
16:34:39 9 you were exploring building the new facility, right?

16:34:42 10 A. Yes, that's correct.

16:34:43 11 Q. And then in the third bullet down reads including  
16:34:47 12 super sacks, liquid and perhaps other products, brown,  
16:34:51 13 powdered, et cetera, do you see that?

16:34:52 14 A. Yes.

16:34:53 15 Q. And then in next bullet says grow sales of profitable  
16:34:57 16 products over five years at the expense of lower margin  
16:35:01 17 sales. Did I read that correctly?

16:35:02 18 A. Yes, you did.

16:35:03 19 Q. So Mr. Hines, United was hoping to replace some of  
16:35:06 20 its lower margin sales like bulk sugar with sales of higher  
16:35:10 21 margin products like those listed in your e-mail here;  
16:35:14 22 correct?

16:35:15 23 A. Yes.

16:35:17 24 Q. And then I want to look at the last bullet in your  
16:35:20 25 e-mail here, you wrote attack the market like Chicago,

S. Hines - direct

16:35:25 1 correct?

16:35:25 2 A. Yes.

16:35:25 3 Q. And that refers to this strategy United implemented  
16:35:29 4 in the Chicago area after its Montgomery facility was built,  
16:35:34 5 correct?

16:35:37 6 A. Yes.

16:35:37 7 Q. Mr. Hines, United did not end up pursuing the new  
16:35:41 8 facility in this e-mail?

16:35:44 9 A. Yes.

16:35:44 10 Q. And the reason United has not taken any actions for  
16:35:48 11 its packaging facility in Clewiston is because the company  
16:35:52 12 instead decided to pursue an acquisition of Imperial,  
16:35:56 13 correct?

16:35:57 14 A. No, I don't agree with that.

16:35:58 15 Q. You don't agree with that?

16:35:59 16 A. No.

16:36:00 17 Q. Mr. Hines, United was exploring building a new  
16:36:04 18 facility or either building a facility in either Birmingham  
16:36:10 19 or Atlanta; correct?

16:36:10 20 A. Yes.

16:36:10 21 Q. None of those options were pursued correct?

16:36:12 22 A. That's correct.

16:36:14 23 Q. Sir, I want to point you to your tab in your binder  
16:36:18 24 marked depo transcript and I'll ask you to go to page 150,  
16:36:22 25 please. Mr. Hines, if I could direct you, please to

S. Hines - direct

16:36:37 1 line 17, please. And Mr. Hines, I asked you, Mr. Hines,  
16:36:44 2 what is your understanding of why United did not end up  
16:36:47 3 opening or purchasing a facility in either Birmingham or  
16:36:50 4 Atlanta and your answer was this was strictly an evaluation  
16:36:54 5 exercise and exploratory in nature and before that occurred,  
16:36:57 6 the opportunity to look at the Imperial acquisition would  
16:37:01 7 alternatively provide us with the capacity to serve some of  
16:37:05 8 those attractive customers. Mr. Hines, did I ask you that  
16:37:08 9 question and did you give me that answer?

16:37:11 10 A. Yes.

16:37:12 11 Q. Thank you, sir?

16:37:12 12 Mr. Hines, you can put that document aside.

16:37:15 13 Mr. Hines, before US Sugar agreed to purchase  
16:37:21 14 Imperial, United was considering purchasing Imperial  
16:37:25 15 instead, correct?

16:37:25 16 A. Yes.

16:37:26 17 Q. And when United Sugars was in the process of  
16:37:29 18 considering a proposed acquisition of Imperial, you were  
16:37:32 19 asked to help develop potential earnings associated with  
16:37:32 20 that transaction, correct?

16:37:32 21 A. Yes.

16:37:32 22 Q. And Mr. Hines, you also analyzed potential synergies  
16:37:42 23 that would result from a United acquisition of Imperial,  
16:37:45 24 right?

16:37:42 25 A. Yes.

S. Hines - direct

16:37:46 1 Q. And Mr. Hines, you started looking at potential  
16:37:49 2 synergies associated with a acquisition of Imperial in  
16:37:54 3 March 2018, does that sound right to you?

16:37:56 4 A. Yes.

16:37:57 5 Q. And then Mr. Hines, once US Sugar was considering a  
16:38:01 6 proposed acquisition of Imperial, you took the synergies  
16:38:05 7 analysis that you first put together for a proposed United  
16:38:08 8 Imperial transaction and you refined that analysis for the  
16:38:11 9 current transaction. Is that right?

16:38:13 10 A. Yes, that's correct.

16:38:14 11 Q. Mr. Hines, the data sources you used for your synergy  
16:38:20 12 analysis remained consistent as the buyer changed from  
16:38:23 13 United to U.S. sugars, correct?

16:38:31 14 A. Yes, I think that's -- yes.

16:38:33 15 Q. And Mr. Hines, you led United's calculation of  
16:38:36 16 synergies with regard to US Sugar's acquisition of Imperial,  
16:38:41 17 right?

16:38:41 18 A. Yes, I did.

16:38:42 19 Q. And you don't recall anyone from US Sugar being  
16:38:45 20 involved in the synergies calculations that you computed,  
16:38:48 21 correct?

16:38:50 22 A. No, they were not.

16:38:52 23 Q. So --

16:38:52 24 A. Correct.

16:38:52 25 Q. So, for example, Mr. Hines, Ms. Elaine Wood at US

S. Hines - direct

16:38:58 1 Sugar was not involved in the synergies calculations that  
16:39:01 2 you put together; correct?

16:39:02 3 A. Correct.

16:39:02 4 Q. And Mr. Buker, U.S. Sugar's CEO was not involved in  
16:39:07 5 the synergies calculation that you put together?

16:39:09 6 A. That's correct.

16:39:09 7 Q. Mr. Hines, next please turn to tab PTX 348 in your  
16:39:14 8 binder. Mr. Hines, do you recognize this presentation the  
16:39:26 9 PTX 348, correct?

16:39:29 10 A. Hang on one second, please. Yes, I do.

16:39:35 11 MR. THORNBURGH: Your Honor, there are no  
16:39:37 12 outstanding objections to this exhibit. Plaintiff moves it  
16:39:40 13 into evidence.

16:39:42 14 MS. REEVES: No objection.

16:39:42 15 THE COURT: It's admitted.

16:39:42 16 (PTX Exhibit No. 348 was admitted into  
16:39:44 17 evidence.)

16:39:44 18 BY MR. THORNBURGH:

16:39:44 19 Q. Mr. Hines, I'm going to direct you right away to  
16:39:47 20 slide 28 which is on the screen in front of you. This slide  
16:39:52 21 is describing a category of synergies that you calculated in  
16:39:52 22 connection with a potential United acquisition of Imperial,  
16:39:52 23 right?

16:39:52 24 A. Yes.

16:39:52 25 Q. And this category synergies you referred to it as



S. Hines - direct

16:40:03 1 product mix upgrade, correct?

16:40:06 2 A. Yes.

16:40:07 3 Q. And looking at this first bullet, it reads, Seine  
16:40:10 4 would provide access to attractive southeast - southeast  
16:40:16 5 demand for key products, do you see that?

16:40:18 6 A. Yes, I do.

16:40:18 7 Q. And Seine here refers to Imperial, correct?

16:40:22 8 A. Yes.

16:40:24 9 Q. And beneath that bullet there are several refined  
16:40:28 10 sugar products listed, correct?

16:40:29 11 A. Yes.

16:40:29 12 Q. And so, Mr. Hines, United was hoping to replace some  
16:40:34 13 of its current sales of lower margin products with increased  
16:40:38 14 sales of the higher margin products listed here, correct?

16:40:41 15 A. Yes.

16:40:41 16 Q. But to be clear all of the refined sugar products  
16:40:44 17 listed on this slide are products that United sells today;  
16:40:48 18 right?

16:40:49 19 A. Yes, they are.

16:40:51 20 Q. And so Mr. Hines, United doesn't actually need the  
16:40:52 21 Port Wentworth refinery to be able to sell these package  
16:40:53 22 products since the company can already do so today; right?

16:41:03 23 A. Yes. We can do that today.

16:41:04 24 Q. Okay. Go to slide 30, please.

16:41:10 25 And so Mr. Hines, on this slide there is a table

S. Hines - direct

16:41:13 1 and it's describing how United planned to convert customer  
16:41:17 2 orders currently for bulk sugar from Clewiston to orders for  
16:41:22 3 super sacks in 50-pound bags originating at Port Wentworth;  
16:41:28 4 correct?

16:41:28 5 A. Yes.

16:41:29 6 Q. So Mr. Hines, United plans to reduce its sales of  
16:41:33 7 bulk sugar out of Clewiston as a result of the proposed  
16:41:36 8 transaction?

16:41:37 9 A. I don't agree fully with that.

16:41:40 10 Q. What do you not agree with, sir?

16:41:43 11 A. In order to calculate this aspect, I needed to hold  
16:41:49 12 the volume constant. So the increased sales equaled the  
16:41:55 13 amount of the reduced sales for the purposes of calculating  
16:42:00 14 this synergy.

16:42:02 15 Q. On this slide, Mr. Hines, you calculated or you model  
16:42:06 16 a reduction in the bulk sugar demand that would be refined  
16:42:11 17 at the Clewiston refinery, correct?

16:42:13 18 A. Yes.

16:42:13 19 Q. And Mr. Hines, this analysis on the screen in front  
16:42:16 20 of you does not contemplate the Port Wentworth refinery  
16:42:21 21 producing any more refined sugar than it does today, right?

16:42:22 22 A. That's correct.

16:42:25 23 Q. Now, I would like to go to slide 29, please.

16:42:29 24 Mr. Hines, this slide is indicating that you  
16:42:32 25 estimated that United could quote save \$5.6 million annually

S. Hines - direct

16:42:39 1 by converting bulk sugar demand from Clewiston to 50-pound  
16:42:43 2 bag and super sack sales from Port Wentworth, right?

16:42:47 3 A. Yes.

16:42:47 4 Q. So Mr. Hines, the quote savings that you calculated  
16:42:51 5 here was based on the combined company exiting lower margin  
16:42:56 6 sales and increasing United's sales of these higher margin  
16:42:59 7 products, right?

16:43:00 8 A. Yes, it does.

16:43:01 9 Q. Mr. Hines, really the quote savings here that you  
16:43:04 10 calculated is the increased returns that the combined  
16:43:07 11 company would get from higher margin sales. Right?

16:43:11 12 A. Yes.

16:43:13 13 Q. And then if you look at the bottom of this slide,  
16:43:16 14 Mr. Hines, there is a note that the total estimated savings  
16:43:19 15 was discounted by 40 to 60 percent due to some uncertainty.  
16:43:24 16 Do you see that?

16:43:24 17 A. Yes.

16:43:25 18 Q. And then the first bullet listed there is  
16:43:30 19 cannibalization risk, do you see that?

16:43:31 20 A. Yes.

16:43:32 21 Q. That refers to the fact that Imperial may already  
16:43:34 22 today be fulfilling this anticipated demand for bagged  
16:43:39 23 sugar, right?

16:43:39 24 A. Yes.

16:43:40 25 Q. Thank you.

S. Hines - direct

16:43:41 1 We can put that document aside now, Mr. Hines.

16:43:48 2 Thank you.

16:43:49 3 Mr. Hines, I'm going to next ask that you turn  
16:43:53 4 to tab PTX 486 in your binder, please.

16:44:19 5 Mr. Hines, do you recognize this e-mail  
16:44:21 6 attachment, correct?

16:44:22 7 A. Yes.

16:44:22 8 Q. It's an e-mail that you wrote, correct?

16:44:25 9 A. Yes.

16:44:26 10 MR. THORNBURGH: Your Honor, there are no  
16:44:28 11 outstanding objections to this exhibit. We move to admit it  
16:44:31 12 into exhibit, please.

16:44:32 13 THE COURT: Is this 486, you said?

16:44:34 14 MR. THORNBURGH: Correct, it should be PTX 486,  
16:44:37 15 Your Honor, this is an e-mail attachment and I will be  
16:44:41 16 asking you to allow me to introduce a demonstrative that's  
16:44:44 17 related to it.

16:44:44 18 THE COURT: Great. Thank you.

16:44:47 19 MS. REEVES: No objection.

16:44:49 20 (PTX Exhibit No. 486 was admitted into  
16:44:52 21 evidence.)

16:44:52 22 MR. THORNBURGH: Your Honor, can we publish it?

16:44:52 23 BY MR. THORNBURGH:

16:44:52 24 Q. Mr. Hines, this is an e-mail that you wrote to your  
16:44:55 25 colleague, Mr. Hanson, on October 22nd, 2020, correct?

S. Hines - direct

16:44:58 1 A. Yes.

16:44:58 2 Q. And Mr. Hanson assisted you with some of the  
16:45:02 3 synergies work that you did in connection with the proposed  
16:45:05 4 transaction, correct?

16:45:06 5 A. Yes.

16:45:06 6 Q. And the subject line of your e-mail is updated  
16:45:09 7 industrial synergies. Do you see that?

16:45:11 8 A. Yes.

16:45:12 9 Q. And industrial synergies here refers to the  
16:45:14 10 industrial customer distribution synergies that you  
16:45:16 11 calculated, correct?

16:45:20 12 A. Yes.

16:45:21 13 Q. And distribution savings, Mr. Hines, was the most  
16:45:24 14 significant bucket of synergies that you calculated with  
16:45:26 15 regards to the proposed transaction, correct?

16:45:31 16 A. Yes. That's correct.

16:45:31 17 Q. And then the next line in your e-mail starts with  
16:45:37 18 Seine 2.0 Synergies. Do you see that?

16:45:41 19 A. Yes.

16:45:42 20 Q. And so Seine 2.0 specifically refers to US Sugar's  
16:45:48 21 proposed acquisition of Imperial, right?

16:45:52 22 A. Yes,

16:45:52 23 Q. So Seine, Mr. Hines, was a code name used for both  
16:45:55 24 the contemplated United acquisition of Imperial and US Sugar  
16:46:01 25 proposed acquisition of Imperial, correct?

S. Hines - direct

16:46:03 1 A. Yes.

16:46:03 2 Q. And Mr. Hines, although you may have updated your  
16:46:06 3 synergies analysis since you sent this e-mail in  
16:46:10 4 October 2020, the methodology that you utilized in the  
16:46:13 5 attachments we're about to look at never materially changed,  
16:46:16 6 right?

16:46:17 7 A. Yes, the approach was the same, yes.

16:46:19 8 Q. And Mr. Hines, you shared this methodology with  
16:46:23 9 consultant at BDO that work with United and US Sugar on  
16:46:29 10 calculating synergies for the proposed transaction, right?

16:46:32 11 A. Yes.

16:46:34 12 MR. THORNBURGH: Your Honor, I now request  
16:46:36 13 permission to introduce a demonstrative that will be  
16:46:38 14 identified PTX 486. As we discussed, this is an excerpt of  
16:46:41 15 a spreadsheet that was attached to this e-mail that  
16:46:43 16 Mr. Hines and I have been discussing. And I believe there  
16:46:45 17 are no objections to this demonstrative.

16:46:48 18 MS. REEVES: No objections, Your Honor.

16:46:51 19 THE COURT: Thank you. Go ahead.

16:46:54 20 MR. THORNBURGH: Your Honor, I'm showing on the  
16:46:56 21 screen a redacted version of the demonstrative. I believe  
16:46:58 22 you should have an unredacted as should Mr. Hines.

16:47:02 23 THE COURT: When I pull up -- there is a native  
16:47:04 24 -- this is 486?

16:47:12 25 MR. THORNBURGH: This is PDX 486, Your Honor,

S. Hines - direct

16:47:14 1 which was the naming convention used to identify the  
16:47:18 2 demonstratives. It should be a PDF if that's helpful at  
16:47:28 3 all.

16:47:48 4 THE COURT: Sorry about that. Thank you. I  
16:47:50 5 have it.

16:47:51 6 MR. THORNBURGH: Great.

16:47:51 7 (PDX Exhibit No. 486 was marked for  
16:47:52 8 identification.)

16:47:52 9 BY MR. THORNBURGH:

16:47:53 10 Q. Mr. Hines, I want to direct your attention to page 1  
16:47:54 11 that's up on the screen. And Mr. Hines, your counsel has  
16:47:55 12 designated the numerical values on this page as confidential  
16:48:00 13 so I have to try to avoid saying them out loud. Mr. Hines,  
16:48:01 14 this sheet contains your aggregated calculations at this  
16:48:10 15 time for purported distribution savings associated with  
16:48:14 16 industrial customers for the proposed transaction. Right?

16:48:17 17 A. Yes, that's correct.

16:48:18 18 Q. And more specifically, Mr. Hines, this page is  
16:48:21 19 showing the potential volume of refined sugar that would be  
16:48:22 20 shifted to or from Port Wentworth, Clewiston and the Red  
16:48:32 21 River Valley in connection with United's industrial  
16:48:32 22 customers if the proposed transaction was completed. Is  
16:48:40 23 that right?

16:48:42 24 A. Yes.

16:48:42 25 Q. And Mr. Hines, you calculated a savings or in some

S. Hines - direct

16:48:45 1 cases an additional cost associated with moving the origins  
16:48:49 2 of customer sugar purchases to, or from Clewiston, the Red  
16:48:56 3 River Valley or Port Wentworth, right?

16:48:58 4 A. Yes.

16:48:58 5 Q. Now, I want to go to the second page of this  
16:49:01 6 demonstrative, please. And again, Mr. Hines, your counsel  
16:49:05 7 has designated these values as confidential, so I ask you to  
16:49:09 8 try to avoid saying them aloud.

16:49:12 9 Mr. Hines, this sheet contains the customer and  
16:49:16 10 product specific data that you used to calculate the summary  
16:49:20 11 synergies that we just looked at, correct?

16:49:23 12 A. Yes.

16:49:23 13 Q. And so I just want to go through your methodology  
16:49:26 14 here a little bit.

16:49:27 15 Mr. Hines column E contains the specific  
16:49:31 16 examiner or order at issue that you looked at, right?

16:49:34 17 A. Yes.

16:49:34 18 Q. And then column N is the product that is sold to that  
16:49:38 19 particular customer in the location referenced in that row;  
16:49:42 20 correct?

16:49:43 21 A. Yes.

16:49:44 22 Q. And then if we go all the way over to the far right,  
16:49:48 23 savings, there you'll find the distribution savings that you  
16:49:52 24 have calculated associated with each of these customer  
16:49:55 25 products and facilities, right?



S. Hines - direct

16:49:57 1 A. Yes.

16:49:58 2 Q. And Mr. Hines, I just want to be very clear, column  
16:50:04 3 AM for savings, to calculate that savings you calculated the  
16:50:07 4 change in freight costs associated with moving the customer  
16:50:10 5 order and then you multiplied it by the volume of the  
16:50:13 6 refined sugar product at issue; right?

16:50:16 7 A. Yes.

16:50:16 8 Q. That was the total calculation; correct, sir?

16:50:20 9 A. Yes.

16:50:21 10 Q. Okay. And Mr. Hines, just as we did during your  
16:50:25 11 deposition, I have sorted this data so that the customer  
16:50:29 12 line item entries with the largest savings are listed first.  
16:50:33 13 Do you recognize that now on the screen in front of you,  
16:50:36 14 sir?

16:50:36 15 A. Yes. Yes, I do.

16:50:37 16 Q. So Mr. Hines, the second entry here is for General  
16:50:41 17 Mills' Covington, Georgia facility. Do you see that?

16:50:45 18 A. Yes.

16:50:45 19 Q. And United currently delivers refined sugar to this  
16:50:49 20 General Mills facility in Covington, Georgia, right?

16:50:52 21 A. Yes.

16:50:53 22 Q. And the product listed for this facility is bulk fine  
16:50:57 23 granulated sugar; correct, sir?

16:50:59 24 A. Yes.

16:51:00 25 Q. And so the value in column AM, savings, the furthest

S. Hines - direct

16:51:05 1 to the right indicates the total distribution savings that  
16:51:08 2 you estimated for bulk fine granulated sugar that United  
16:51:13 3 delivers to this General Mills location, correct?

16:51:17 4 A. Yes.

16:51:19 5 Q. And Mr. Hines, in estimating the quote, savings  
16:51:24 6 associated with this General Mills facility, you did not  
16:51:27 7 give any consideration as to whether General Mills was  
16:51:30 8 currently benefitting from competition between Imperial and  
16:51:34 9 United, right?

16:51:35 10 A. That's correct.

16:51:37 11 Q. And that is true even though Covington, Georgia is  
16:51:41 12 located less than 230 miles from Port Wentworth and the  
16:51:44 13 proposed transaction would eliminate Imperial as a proposed  
16:51:50 14 competitor, correct, Mr. Hines?

16:51:52 15 A. I don't know that the distance, but yes, it -- yes, I  
16:51:58 16 agree in general with that statement.

16:52:00 17 Q. Now, Mr. Hines, the savings associated with General  
16:52:04 18 Mills as shown in this table is not money that you  
16:52:07 19 contemplated returning to General Mills in the form of lower  
16:52:11 20 prices as part of your synergies analysis, correct?

16:52:15 21 A. I did not contemplate what would happen with that  
16:52:18 22 money. That was not part of my charge.

16:52:22 23 Q. And, in fact, Mr. Hines, your synergies analysis  
16:52:26 24 assumed that this money would result in quote more NSP  
16:52:30 25 dollars available to United's members, right?

S. Hines - direct

16:52:33 1 A. I did not contemplate what would happen with those  
16:52:36 2 dollars.

16:52:36 3 Q. But the savings would, in fact, increase the NSP  
16:52:42 4 dollars available to United's membership, that's what you  
16:52:46 5 were modeling, correct, sir?

16:52:47 6 A. Yes.

16:52:47 7 Q. We go one row down the next entry is for Hershey,  
16:52:54 8 Stuarts Draft facility. Do you see that?

16:52:55 9 A. Yes, I do.

16:52:56 10 Q. And that Stuarts Draft facility is in Virginia,  
16:53:00 11 right?

16:53:00 12 A. Yes.

16:53:00 13 Q. As part of your synergies analysis you did not  
16:53:04 14 contemplate returning any of the savings found in column AM  
16:53:09 15 to Hershey as part of your synergies analysis, correct?

16:53:12 16 A. I don't agree with that. My exercise did not  
16:53:16 17 contemplate what would occur with those funds.

16:53:18 18 Q. Understood.

16:53:20 19 So Mr. Hines, you did not contemplate returning  
16:53:23 20 the money that's indicated in the savings column to Hershey  
16:53:26 21 in the form of lower prices in the result of a synergies  
16:53:30 22 analysis?

16:53:32 23 A. That is correct.

16:53:34 24 Q. Lastly, I want to draw your attention to Row 19. You  
16:53:37 25 will see Piedmont Candy there. Do you see that?

S. Hines - cross

16:53:38 1 A. Yes.

16:53:39 2 Q. And their location is in Lexington, North Carolina.

16:53:43 3 Do you see that?

16:53:44 4 A. Yes.

16:53:44 5 Q. And similarly, Mr. Hines, you did not contemplate  
16:53:48 6 returning any of these savings to Piedmont Candy as a result  
16:53:52 7 of the proposed transaction, right?

16:53:53 8 A. My exercise didn't contemplate what would happen with  
16:53:57 9 those funds.

16:53:58 10 Q. Mr. Hines, in all the financial modeling that you did  
16:54:02 11 for the transaction, going back to March 2019, despite  
16:54:06 12 estimating millions of dollars of purported synergies, you  
16:54:10 13 did not model or consider giving these customers lower  
16:54:14 14 prices as a result of these savings, correct?

16:54:17 15 A. That's correct.

16:54:19 16 MR. THORNBURGH: Mr. Hines, I have no further  
16:54:23 17 questions for you at this time.

16:54:24 18 THE COURT: Thank you.

16:54:26 19 Cross-exam.

16:54:30 20 MS. REEVES: Good afternoon, Your Honor. Amanda  
16:54:34 21 Reeves for US Sugar. May I proceed?

16:54:36 22 THE COURT: Please.

16:54:38 23 CROSS-EXAMINATION

16:54:39 24 BY MS. REEVES:

16:54:40 25 Q. Good afternoon, Mr. Hines. Did you have any role

S. Hines - cross

16:54:40 1 associated with the transaction between US Sugar and  
16:54:42 2 Imperial Sugar?

16:54:45 3 A. Yes, I provided input on synergies.

16:54:48 4 Q. And what synergies did you identify?

16:54:51 5 A. Among the synergies the most significant were  
16:54:56 6 distribution cost savings and the effect of product  
16:55:00 7 switching.

16:55:00 8 Q. Let's walk through both of those synergies. What are  
16:55:04 9 distribution costs synergies?

16:55:06 10 A. Distribution cost synergies are the difference in  
16:55:11 11 distribution costs by moving a customer from its current  
16:55:16 12 origin to a potential new origin, as a result of the  
16:55:21 13 additional company, additional origin.

16:55:26 14 Q. And why did the addition of Imperial's facility lower  
16:55:31 15 United's distribution costs?

16:55:36 16 A. We anticipated that for certain customers that United  
16:55:41 17 was currently serving, the distribution costs would likely  
16:55:46 18 be lower from Imperial.

16:55:48 19 Q. Another synergy you identified was product switching,  
16:55:53 20 can you explain that synergy?

16:55:58 21 A. Yes, that involves selling higher margin products at  
16:56:03 22 the expense of lower margin products.

16:56:08 23 Q. Did your analysis consider any changes to your post-  
16:56:13 24 acquisition prices?

16:56:18 25 A. No.

S. Hines - cross

16:56:12 1 Q. Why not?

16:56:13 2 A. The scope of my exercise was to look strictly at the  
16:56:18 3 costs associated with the synergies.

16:56:22 4 Q. Now, plaintiff just now asked you a series of  
16:56:26 5 questions about what factor the transaction would have in  
16:56:29 6 terms of additional products, and whether additional output  
16:56:34 7 would result, tell me how you factored output into your  
16:56:38 8 analysis?

16:56:39 9 A. In order to isolate the effect of the synergies I  
16:56:44 10 assumed there was no change in output.

16:56:46 11 Q. Why did you assume that?

16:56:47 12 A. In order to clearly identify the effect solely of the  
16:56:53 13 distribution cost synergies of this case.

16:56:56 14 Q. If US Sugar acquires Imperial, do you know whether  
16:56:59 15 production output will remain the same?

16:57:01 16 A. My understanding is they expect to produce more.

16:57:05 17 Q. And how would increased production affect your  
16:57:09 18 synergies analysis?

16:57:11 19 A. Well, in the case of product switching, we could sell  
16:57:14 20 the additional higher margined products without giving up  
16:57:19 21 the lower margin products.

16:57:22 22 Q. Let's switch gears a bit. You were also asked some  
16:57:25 23 questions about implementing the Chicago strategy in the  
16:57:30 24 southeast?

16:57:32 25 A. Yes.

S. Hines - cross

16:57:31 1 Q. What steps did you take with regard to analyzing  
16:57:34 2 whether to build a packaging facility in the southeast?

16:57:38 3 A. We did a very cursory evaluation, preliminary  
16:57:45 4 evaluation which was never completed.

16:57:48 5 Q. And do you know why the plan to implement the Chicago  
16:57:53 6 strategy was abandoned?

16:57:55 7 A. No.

16:57:55 8 Q. Are you aware of whether United has any plans to  
16:57:57 9 implement the Chicago strategy in the southeast post  
16:58:01 10 closing?

16:58:02 11 A. No.

16:58:04 12 Q. Plaintiff also asked you a series of questions just  
16:58:07 13 now about the spreadsheet, PTX 486. You were asked about a  
16:58:12 14 series of customers listed there. Do you recall that a few  
16:58:15 15 minutes ago?

16:58:15 16 A. Yes, I do.

16:58:16 17 Q. Can you tell us how those customers were selected?

16:58:19 18 A. The -- we don't know Imperial's customers, nor do we  
16:58:24 19 know their costs. We know United's customers and costs so  
16:58:29 20 in order to calculate the distribution synergies, we created  
16:58:34 21 a pro forma customer mix of customers that would likely be  
16:58:40 22 Imperial's and we used estimated rates.

16:58:42 23 Q. Was that list based on your knowledge of head-to-head  
16:58:47 24 competition with Imperial?

16:58:47 25 A. No.

S. Hines - redirect

16:58:50 1 MS. REEVES: Thank you. I have no further  
16:58:55 2 questions.

16:58:59 3 REDIRECT EXAMINATION

16:58:59 4 BY MR. THORNBURGH:

16:58:59 5 Q. Mr. Hines, just a few more questions. I would ask  
16:59:02 6 that you turn to tab PTX 547 in your binder, please.

16:59:18 7 Mr. Hines, you recognize this e-mail, correct?

16:59:20 8 A. Yes, I do.

16:59:21 9 Q. This is an e-mail that you wrote on April 12, 2019?

16:59:25 10 A. Yes.

16:59:26 11 MR. THORNBURGH: Your Honor, there are no  
16:59:28 12 outstanding objections to this exhibit. We ask that it be  
16:59:31 13 admitted into evidence.

16:59:32 14 MS. REEVES: No objection.

16:59:32 15 THE COURT: Thank you. It's admitted.

16:59:34 16 (PTX Exhibit No. 547 was admitted into  
16:59:35 17 evidence.)

16:59:35 18 BY MR. THORNBURGH:

16:59:36 19 Q. Mr. Hines, this is an e-mail that you wrote to  
16:59:40 20 individuals who worked at United's member owners, correct?

16:59:40 21 A. Yes.

16:59:42 22 Q. Okay. And if we could zoom in on the top e-mail.

17:00:02 23 Mr. Hines, in this e-mail, you were analyzing or looking at  
17:00:10 24 potential financials associated with an acquisition of  
17:00:12 25 Imperial, correct?



17:00:16 1 A. Yes.

17:00:16 2 Q. And I want to draw your attention to the numbers  
17:00:22 3 listed in the middle of this e-mail, and specifically number  
17:00:26 4 3 where you write, "Better yet, I propose 1.5 percent  
17:00:29 5 inflation on costs, 1.5 percent on freight, and a more  
17:00:34 6 realistic 1.15 increase in prices."

17:00:38 7 Do you see that?

17:00:38 8 A. Yes.

17:00:38 9 Q. In this analysis you were considering prices as part  
17:00:41 10 of your financial modeling, correct?

17:00:41 11 A. I was attempting to forecast margins but because of  
17:00:44 12 the way the model was set up it included both prices and  
17:00:47 13 costs.

17:00:49 14 Q. So prices was part of the analysis that you looked  
17:00:52 15 at, correct, sir?

17:00:53 16 A. Correct.

17:00:54 17 MR. THORNBURGH: No further questions, Your  
17:00:57 18 Honor.

17:00:59 19 THE COURT: All right. Thank you. Sir, you are  
17:01:02 20 excused. Let me just ask, PDX 486, that's a demonstrative,  
17:01:05 21 but you offered it into evidence.

17:01:07 22 MR. THORNBURGH: Yes, Your Honor, if that's  
17:01:10 23 something that would aid the Court, it's a summary of  
17:01:13 24 information --

17:01:15 25 THE COURT: Usually someone would mark a summary

17:01:17 1 exhibit as a DX, it's weird that it's a demonstrative. We  
17:01:21 2 don't usually consider those evidence and they don't come  
17:01:23 3 into evidence, that's why I'm confused.

17:01:26 4 MR. THORNBURGH: Your Honor, we wanted to admit  
17:01:27 5 the underlying exhibit. If it's the Court's preference, we  
17:01:35 6 will not offer the demonstrative into evidence.

17:01:37 7 THE COURT: Okay. Now I'm confused. Because  
17:01:42 8 defendants didn't object. So you guys are all cool with  
17:01:45 9 this demonstrative coming into evidence?

17:01:48 10 MS. REEVES: Your Honor, it's up to the  
17:01:51 11 government whether they want to admit it. We don't object  
17:01:54 12 to it.

17:01:55 13 MR. THORNBURGH: If there is no objection, we  
17:01:58 14 would like it to be admitted.

17:01:58 15 THE COURT: For the most part if we're going to  
17:02:01 16 do summaries I would mark them as trial exhibits, because it  
17:02:05 17 gets confusing go when they're demonstratives, I know what  
17:02:08 18 you were doing with that, so we'll take that. Thank you,  
17:02:13 19 sir.

17:02:13 20 What's next?

17:02:14 21 MR. HANNA: Your Honor, we're going to play two  
17:02:17 22 videos. I think they're two 25-minute or about 20 -- the  
17:02:20 23 first one is 27 minutes. We'll give Mr. Buckson the actual  
17:02:30 24 time, about 17 minutes for plaintiffs and about ten minutes  
17:02:33 25 for the defendants.

17:02:36 1 And we're going to call Matthew Kling. He's the  
17:02:40 2 chief operating officers of Batory Foods. Batory Foods will  
17:02:47 3 discuss purchasing and sale of sugar and other products.

17:03:07 4 (Videotape deposition of Matthew Kling:)

17:03:14 5 Q. Mr. Kling, would you please state your name for the  
17:03:16 6 record?

17:03:16 7 A. Matthew George Kling.

17:03:18 8 Q. Where do you work?

17:03:20 9 A. I work for Batory Foods.

17:03:25 10 Q. And at a very high level, what is Batory's business?

17:03:29 11 A. Batory is one of the largest food ingredient  
17:03:34 12 distributors in the United States.

17:03:36 13 Q. What is your current role at Batory?

17:03:38 14 A. Chief operating officer.

17:03:39 15 Q. Can you describe briefly how Batory's business has  
17:03:43 16 expanded, if at all, since you came on board?

17:03:46 17 A. We -- we have acquired other distributors in the --  
17:03:51 18 in the national marketplace. That's been primarily the --  
17:03:55 19 the acquisitional growth we've had. Organically, we earn  
17:04:02 20 new customers every day. Organically, that's -- that's our  
17:04:07 21 primary route to -- to growth.

17:04:13 22 But there have been some acquisitions since I've  
17:04:18 23 joined.

17:04:20 24 MR. HANNA: Your Honor, I apologize. I forgot  
17:04:25 25 to request permission to close the courtroom. As we talked

earlier this morning, there is some confidential information.

THE COURT: The depositions are largely confidential. And I think good cause has been shown in the written submissions which we received, so we will do that with the proviso that public redactions need to be made for the nonpublic information. But for now we will close the courtroom.

MR. HANNA: I apologize for that, Your Honor.

(Courtroom sealed.)

A. But there have been some acquisitions since I joined.

Q. Can you give us a sense of how much the customer base has grown since you joined Batory?

A. It would be -- it would be approximately a double digit percentage increase.

Q. Batory does not refine sugar, does it?

A. We do not refine sugar.

Q. Is it fair to say that, in part, your strategy is to buy sugar where it's less expensive in certain parts of the United States or abroad and then resell it in places where it can command a higher price?

A. Yes.

Q. And when Batory purchases sugar at a low price, is it able to beat out competitors by offering that sugar to customers at a lower price? Correct?

17:06:09 1 A. Incorrect.

17:06:09 2 Q. Incorrect? Why is that incorrect?

17:06:11 3 A. We try to extract value for what we do. A lot of our  
17:06:16 4 customers are customers that come to us and want to purchase  
17:06:20 5 other ingredients for delivery at the same time. There are  
17:06:24 6 costs incurred with buying and warehousing sugar that are  
17:06:35 7 indignant to how we -- we cost our -- our products.

17:06:39 8 Q. Is it fair to say that Batory is able to leverage its  
17:06:43 9 facilities and distribution network to move sugar from areas  
17:06:47 10 of supply to area of demand?

17:06:49 11 A. It's fair to say that.

17:06:51 12 Q. At this point, I'm going to mark an exhibit. It's  
17:06:54 13 BAT 0210. It's an Excel spreadsheet.

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Q. So let's now mark as Exhibit 2, BAT 0208, another Excel spreadsheet. And I guess we should put this in the chat as well, so everyone can see it in native form.

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17:08:24 13

17:08:28 14

Are you familiar with this document?

17:08:32 15

A. I am.

17:08:32 16

Q. What does it show?

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Q. Let's move to the third and last exhibit I'm going to

17:11:16 1 show you. It's another Excel spreadsheet with production  
17:11:20 2 number BAT 0209. If we could put that in the chat, that  
17:11:27 3 would be great.

17:11:27 4 And are you familiar with this document?

17:11:31 5 A. I am.

17:11:32 6 Q. And what does it show?

17:11:34 7 [REDACTED]  
17:11:39 8 [REDACTED]  
17:11:47 9 [REDACTED]  
17:11:51 10 [REDACTED]  
17:11:51 11 [REDACTED]

17:11:52 12 Q. And focusing in on what the DOJ calls the southeast,  
17:12:00 13 how would you describe the competitive environment for  
17:12:03 14 refined sugar in that region?

17:12:05 15 A. How would I describe the competitive environment?

17:12:09 16 Q. Is it very competitive? Is it not competitive? You  
17:12:14 17 know, however you want to describe it.

17:12:17 18 A. I would describe it as not very competitive.

17:12:19 19 Q. Why do you say that?

17:12:20 20 A. You have -- you have one refiner that is not  
17:12:24 21 vertically integrated, which is the Savannah refinery, so  
17:12:31 22 they cannot compete in the market month in and month out.

17:12:32 23 You have two refiners in Florida. One is more  
17:12:41 24 focused on retail than they are on the formats that we need  
17:12:51 25 for our products.



17:12:53 1 And the freight lanes going from the Gulf to the  
17:12:58 2 east are not necessarily competitive. They're generally not  
17:13:02 3 freight lanes that carries -- carriers aspire to transport  
17:13:10 4 product in.

17:13:11 5 [REDACTED]

17:13:17 6 [REDACTED]

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17:13:30 11 [REDACTED]

17:13:34 12 [REDACTED]

17:13:36 13 [REDACTED]

17:13:42 14 [REDACTED]

17:13:48 15 [REDACTED]

17:13:50 16 [REDACTED]

17:13:56 17 [REDACTED]

17:14:02 18 [REDACTED]

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17:14:07 20 [REDACTED]

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Q. Is there a reason why Batory's purchases from United have declined?

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A. Yes. They -- they have chosen to de-emphasize their sales to distributors.

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Q. And what do you mean by they've chosen to de-emphasize sales to distributors?

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A. They would prefer that distributors focus solely on LTL business, and they do not want to supply distributors who supply full truckloads to customers.

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Q. When did you first become aware that United was adopting this new strategy?

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A. Approximately at the time I joined Batory, they were transitioning into a new mindset about working with distributors.

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At one time, United supplied Batory with close to 80, 85 percent of all of its sugar.

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Q. And when did that change?

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A. I -- we started to see the change in 2017. There were moves beginning to become apparent to us. They decided to supply us with less. And, you know, they made a decision to build a -- a pretty significant facility in Chicago to compete with us. So in that 2017 time range line was when we saw this -- this strategy change begin.

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17:25:36 1 Q. And what facility did they build in Chicago?

17:25:44 2 A. They built a sugar distribution facility in  
17:25:48 3 Montgomery, Illinois.

17:25:50 4 Q. And how did -- sorry, go ahead.

17:25:52 5 A. And it's a significant capital investment, and it --  
17:25:56 6 it gives them a platform to focus on business segments that  
17:26:00 7 historically were not in their portfolio.

17:26:04 8 Q. And what are those business segments?

17:26:08 9 A. It's the local truckload Chicago market for vans --  
17:26:13 10 package vans, as well as bulk sugar delivery. Prior to  
17:26:20 11 that, we were providing those handling services for them in  
17:26:25 12 Chicago.

17:26:27 13 Q. And how did United new strategy impact Batory?

17:26:31 14 A. Well, it caused us to find other suppliers that could  
17:26:41 15 be our supply partners in the markets we play or we  
17:26:46 16 participate in.

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Q. I want to go back to the discussion about United's new facility in Chicago.

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Where did they build that facility?

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A. It's in Montgomery, Illinois, which is about thirty-five miles west of Chicago.

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Q. And how would you describe the facility that they built?

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A. It's a significant capital investment. They've -- they built it initially as a storage facility for sugar coming from their member partners. They do a lot of bulk sugar through there in truckload quantities. They are

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17:29:01 1 moving in the direction of expanding the offerings from that  
17:29:05 2 site. The date is still a TBD.

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Q. I want to go back to liquid sugar for a second.

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What is the radius -- the typical radius for  
shipping liquid sugar?

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A. It's -- the -- the effective radius is 200 miles or  
less.

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And the reason why, in a trailer of liquid  
sugar, two-thirds of it is sugar, one-third of it is water.  
So the cost to ship that percentage of water is very -- you  
know, there's a cost-effective scenario that comes into  
play.

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17:32:12 1 (End of videotape.)

17:32:15 2 MR. HANNA: Your Honor, at this time United  
17:32:18 3 States moves into evidence, JTX 046 that was identified in  
17:32:23 4 the deposition as BAT 0209.

17:32:32 5 MS. DWYER: Your Honor, we have no objection.  
17:32:33 6 I'm Hannah Dwyer on behalf of Imperial Sugar and LDC. The  
17:32:35 7 defendants would also like to move into evidence JTX 047  
17:32:39 8 which was exhibit 1 in the video, or BAT 0210, as well as  
17:32:46 9 JTX 045, which was Exhibit 2 in the video or BAT 0208. And  
17:32:55 10 plaintiff already moved in the JTX046.

17:32:57 11 THE COURT: Any objection?

17:32:59 12 MR. HANNA: No objections, Your Honor.

17:33:01 13 THE COURT: All of those will be admitted.

17:33:01 14 (The above listed exhibits were admitted into  
17:33:01 15 evidence.)

17:33:02 16 THE COURT: What's next?

17:33:03 17 MR. HANNA: Your Honor, the United States calls  
17:33:05 18 Chris Simons, the CEO and president of National Sugar  
17:33:10 19 Marketing, by video. NSM markets sugar on behalf of two  
17:33:12 20 companies.

17:33:12 21 (Videotape deposition of Chris Simons:)

17:33:22 22 Q. Okay. If you could just to begin with, tell me where  
17:33:32 23 you're currently employed?

17:33:32 24 A. I'm employed at National Sugar Marketing based in  
17:33:35 25 Atlanta, Georgia.

17:33:36 1 Q. And was your position there?

17:33:38 2 A. CEO and president.

17:33:40 3 Q. What is National Sugar Marketing Cooperative?

17:33:44 4 A. So we are a marketing company. We have two members,  
17:33:48 5 Amalgamated Sugar Company and Southern Minn Sugar Company.  
17:33:56 6 And we also have a marketing agreement with a company called  
17:34:00 7 Sucden based out of Paris, France and located here in the  
17:34:04 8 United States in Miami, Florida. So the five individuals  
17:34:10 9 that I have talked about that are functional leads we  
17:34:14 10 provide those services for those two members and one  
17:34:16 11 marketing company.

17:34:18 12 Q. All right. And Southern Minnesota, is that --  
17:34:21 13 Southern Minnesota Beet and Sugar Cooperative?

17:34:24 14 A. Beet sugar, yes.

17:34:25 15 Q. We will call them Southern Minn.

17:34:29 16 A. Yes.

17:34:31 17 Q. And Amalgamated Sugar Company was the other member?

17:34:35 18 A. Yes, ma'am.

17:34:36 19 Q. And they are a farming cooperative?

17:34:38 20 A. Yes, ma'am.

17:34:42 21 Q. Looking first at Southern Minn where it's kind of the  
17:34:50 22 same question, but where are they located?

17:34:52 23 A. It actually is a more difficult question than you  
17:34:56 24 probably think. They have a facility in Renville,  
17:35:00 25 Minnesota, but they also own a facility in Brawley,

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California.

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Q. Do any of the facilities operated by Southern Minn produce cane sugar?

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A. No.

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Q. How about any of the facilities operated by Amalgamated, do they produce cane sugar?

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A. No.

17:35:31 11

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Q. Does NSM market all of the refined sugar produced by its members?

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A. Yes.

17:35:37 14

17:35:41 15

Q. Is NSM the exclusive marketer of products for -- or excuse me, refined sugar products for its members?

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A. Yes.

17:35:46 17

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Q. Does NSM have any responsibility in setting or directing the members in how much refined sugar they will produce?

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A. I said no.

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Q. Did the members have responsibility or any input into determining the actual price that NSM enters into with respect to a particular customer?

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A. Not that I've seen in the two years I've been here, no. Not down to that level.

17:36:17 25

17:36:23 1 Q. Does Southern -- NSM have a marketing relationship  
17:36:27 2 with Sucden?

17:36:30 3 A. Yes.

17:36:30 4 Q. Do you set up a marketing plan with Sucden annually  
17:36:36 5 similar to what you do with the other two members?

17:36:40 6 A. No. We have no idea when or where they are going to  
17:36:45 7 bring product in. I mean, they're a trader.

17:36:49 8 Q. And what sorts of sugar do you market on their  
17:36:53 9 behalf?

17:36:53 10 A. Right now, the last year or two, it's been  
17:36:57 11 100 percent cane sugar.

17:36:58 12 Q. They import the sugar?

17:37:00 13 A. Nearly all of it would be imported.

17:37:04 14 Q. What are some of the quality issues that come up with  
17:37:08 15 sourcing sugar from a foreign refinery?

17:37:15 16 A. Documentation is probably the biggest. Audits.  
17:37:18 17 Granulation size. Product coming into the United States  
17:37:23 18 hard and lumpy. So, you have a bag of sugar in your house  
17:37:31 19 for four or five years, it becomes hard and lumpy, and that  
17:37:36 20 often can be what comes into the United States. Color can  
17:37:42 21 be an issue.

17:37:42 22 Q. What are the granulation concerns that you have with  
17:37:47 23 the imported product?

17:37:50 24 A. It can vary. If you are trying to granulate sugar  
17:37:54 25 faster, often the granulation size will become bigger, which

17:38:01 1 is -- can be a challenge to certain customers. They want  
17:38:11 2 certain, what they call screen size, you know, the ability  
17:38:17 3 to get sugar in a certain granulation size versus a  
17:38:21 4 different size.

17:38:22 5 Q. What are the color issues that are -- you might  
17:38:26 6 confront with an imported product?

17:38:29 7 A. Some customers have color -- are very specific on  
17:38:33 8 color. You can have somebody that's putting sugar into  
17:38:40 9 chocolate may not care. Somebody that's putting sugar into  
17:38:44 10 something that's clear or white will care on color. So  
17:38:49 11 that's -- it just depends on what that product is used for.

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17:39:28 20 Q. Can you give me some examples of who falls under the  
17:39:32 21 distribution business in your mind?

17:39:36 22 A. Sweetener Products. Sweeteners Plus. Sweetener  
17:39:40 23 Supply. Indiana Sugars. Batory. Evergreen Sweeteners.  
17:39:44 24 Those would be some of the bigger ones.

17:39:48 25 Q. And how are distributors different at all from



17:40:01 1 customers that NSM would be selling to?

17:40:04 2 A. Most distributors do something different with the  
17:40:10 3 product and we would ship it in bulk rail to a distributor  
17:40:19 4 and they would liquify it. They would put it in a  
17:40:29 5 customer's bag for them. They will maybe provide only a  
17:40:33 6 pallet's worth of product, versus we are looking to be  
17:40:38 7 Tons-R-Us, you know, we want things mostly moving in bulk.  
17:40:41 8 So they provide different types of products and packaging  
17:40:44 9 that we wouldn't provide.

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Q. And that would be because --

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A. Crop gets frozen. Crop melts.

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Q. Has that happened during your tenure?

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A. Yes.

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Q. And most of your customers -- would you say most of

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your customers typically have annual contracts of one form

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or another?

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A. Almost all of them, yes.

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Q. Over 90 percent?

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A. Easily by volume. Easily.

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Q. How does the -- how does the storage capacity affect

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your pricing decisions?

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A. Could dramatically.

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Q. And in what way, how does that manifest?

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A. So a silo, again, can either be too low or too high.

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If you have it too low it causes operational challenges, you

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can't get the sugar out of the silo, so you have to manage

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that silo to a certain level, high and low, and you may have

17:43:15 24

to take different pricing decisions to try to move product

17:43:19 25

to keep those silos within that range.

17:43:24 1 Q. NSM's headquarters are in Atlanta?

17:43:28 2 A. Correct.

17:43:28 3 Q. And do -- does the company have any warehousing  
17:43:32 4 capability or terminal capability of its own in Atlanta?

17:43:38 5 A. No.

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17:44:07 14 Q. And you said most of your customers are getting a  
17:44:16 15 delivered price not an FOB?

17:44:18 16 A. At least ninety percent, yes.

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17:44:30 21 Q. How is -- why is the customer location an important  
17:44:34 22 element of the plan?

17:44:35 23 A. Just from a freight standpoint of where we expect to  
17:44:38 24 be competitive.

17:44:39 25 Q. Is there a particular geographic area where you would

17:44:44 1 -- where you expect NSM will be competitive?

17:44:48 2 A. It can depend on a rail line that a customer's  
17:44:56 3 location is on and our facility's location -- rail line. So  
17:45:04 4 you have a direct -- like, you are on the BN and you ship to  
17:45:08 5 a BN customer. There can be some reduced freight costs  
17:45:14 6 because of that. But for the most part, we are looking at  
17:45:17 7 two-thirds of the United States. We have shipped  
17:45:21 8 everywhere, but yes.

17:45:29 9 Q. If you are shipping the product by truck, does that  
17:45:33 10 narrow the geographic area where you are likely to be  
17:45:37 11 competitive for a customer?

17:45:41 12 A. We believe about 250 miles outside of either a  
17:45:45 13 facility or a warehouse or a terminal is more than likely  
17:45:50 14 going to limit, due to governmental regulations, on driver  
17:45:54 15 hours.

17:46:00 16 Q. In terms of -- we talked about, you know, freight  
17:46:04 17 being a, you know, a significant factor that you consider.  
17:46:08 18 What role does freight play in determining, you know, which  
17:46:12 19 geographic areas you might be interested in marketing to?

17:46:16 20 A. Most part, freight rates are linear. Further mile --  
17:46:30 21 more miles you go, the more cost there is, whether it be  
17:46:34 22 truck or rail. Another key component is the facility's  
17:46:38 23 ability to turn our railcars, and the amount of time a  
17:46:42 24 railcar is away from our facility. Just simple math, if my  
17:46:46 25 railcar leaves Renville, Minnesota, and it takes forty days

17:46:51 1 to come back, versus my ability to ship a customer and I get  
17:46:55 2 it back in twenty, I can turn it twice to the same railcar  
17:47:00 3 that would be for one railcar going forty days. That's a  
17:47:05 4 major decision point for us when we are looking at freight.

17:47:10 5 Q. I don't know if you've had a chance, or wanted to or  
17:47:14 6 had any desire too, but if you had a chance to look at the  
17:47:19 7 complaint that we filed in this matter. Are you familiar  
17:47:22 8 with the states that we -- the geographic market that's  
17:47:27 9 covered by our complaint?

17:47:28 10 A. Yes. We had to provide information around this --  
17:47:35 11 this CID around that, those states, yes.

17:47:40 12 Q. And, at least for purposes of our complaint, we have  
17:47:43 13 defined that area as, you know, the southeast. Do you have  
17:47:47 14 a particular area in -- you know, internally at NSM that you  
17:47:52 15 think of as the southeast?

17:47:54 16 A. No.

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17:48:12 21 Q. Why don't you make a greater percentage of sales in  
17:48:15 22 the twelve state area plus DC that we have alleged?

17:48:20 23 A. Typically it's freight costs and railcar turn.

17:48:32 24 Q. With respect to, again, the southeast region, can you  
17:48:37 25 tell me who some of your larger customers are in the

17:48:43 1 southeast, again, our -- United States Department of  
17:48:48 2 Justice's southeast?

17:48:50 3 A. Defined as southeast. Again, you know, we sell 1  
17:48:53 4 million of our 30 and change million into that region. Most  
17:48:58 5 -- nearly all of those customers are national customers that  
17:49:01 6 we do business with elsewhere in the United States.

17:49:06 7 [REDACTED]

17:49:09 8 [REDACTED]

17:49:12 9 [REDACTED]

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17:49:21 12 [REDACTED]

17:49:26 13 [REDACTED]

17:49:31 14 [REDACTED]

17:49:37 15 [REDACTED]

17:49:39 16 Q. Do you know if you are the sole provider for those  
17:49:44 17 facilities?

17:49:44 18 A. No. The answer is we are not the sole supplier of  
17:49:48 19 that facility.

17:49:49 20 [REDACTED]

17:49:52 21 [REDACTED]

17:49:54 22 [REDACTED]

17:50:00 23 [REDACTED]

17:50:04 24 [REDACTED]

17:50:04 25 [REDACTED]

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Q. Do you know where that sugar is being sourced from?

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A. No. It's either Renville, Minnesota, or Idaho

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facilities.

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Q. What does it mean to be a strategic customer?

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A. We service them at multiple facilities and they have facilities that they would view us as strategic and we would view them as strategic. And that's typically defined by close vicinity to our facility -- our slicing facilities.

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Q. And how -- you said that the Idaho facilities, the  
amalgamated facilities are operating at a higher right of  
utilization, correct?

A. Correct.

17:54:44 1

17:54:48 2

17:54:51 3

Q. During the break, we marked as Exhibit 1 to this

17:54:54 4

deposition an Excel spreadsheet that is entitled, "NSM

17:54:58 5

response to DOJ-US Sugar subpoenas.XLSX. Do you have

17:55:06 6

Exhibit 1 in front of you?

17:55:06 7

A. I do.

17:55:07 8

Q. And are you familiar with this spreadsheet?

17:55:09 9

A. I am.

17:55:10 10

Q. And does this spreadsheet reflect NSM's sales data

17:55:15 11

that was produced in response to a subpoena by the

17:55:18 12

Department of Justice and the defendants in this litigation,

17:55:21 13

as far as you know?

17:55:22 14

A. Yes. Yes.

17:55:23 15

Q. Does this Exhibit 1 summarize actual sales data that

17:55:27 16

NSM maintains in the ordinary course of its business?

17:55:31 17

A. Yes.

17:55:31 18

Q. Do you have in front of you also what we have marked

17:55:34 19

as Exhibit 2. For the record, it is a spreadsheet that is

17:55:38 20

entitled "DOJ-US Sugar data glossary-highly confidential."

17:55:42 21

A. Yes.

17:55:51 22

Q. Okay. And this is a list of the customers that NSM

17:55:52 23

sells to in DOJ's 13 states; is that right?

17:56:00 24

A. Correct.

17:56:02 25

17:56:07 1

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17:56:34 9 Q. Okay. And some of the sugar you sold into those  
17:56:38 10 states was beet sugar; right?

17:56:39 11 A. Yes.

17:56:40 12 Q. So, therefore, that sugar would have come from either  
17:56:44 13 Idaho or Minnesota; is that right?

17:56:47 14 A. And I know of a certain circumstance where it came  
17:56:51 15 from, I believe, Brawley, California, as well.

17:56:55 16

17:56:59 17

17:57:01 18

17:57:02 19 Q. And that's beet sugar that is coming either out of  
17:57:06 20 Idaho or Minnesota?

17:57:08 21 A. Correct.

17:57:08 22

17:57:13 23

17:57:14 24

17:57:14 25

17:57:20 1

17:57:23 2

17:57:24 3

Q. And again, that is beet sugar that is originating

17:57:28 4

either out of Idaho or Minnesota, correct?

17:57:31 5

A. Correct.

17:57:32 6

17:57:36 7

17:57:37 8

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Q. The imported cane sugar that NSM sells from Sucden

17:58:49 7

meets NSM's quality requirements, correct?

17:58:51 8

A. The assumption is yes.

17:58:53 9

Q. You testified earlier that NSM is looking for

17:58:54 10

opportunities anywhere in the U.S. that makes business sense

17:58:54 11

to sell its sugar; is that right?

17:59:01 12

A. Correct.

17:59:01 13

Q. And that would, of course, include DOJ's 13 states,

17:59:04 14

true?

17:59:04 15

A. Correct.

17:59:11 16

17:59:14 17

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Q. And are you -- that sugar was beet sugar out of

17:59:45 1 Idaho, correct?

17:59:46 2 A. It was beet sugar. I'm not certain where it came  
17:59:49 3 from.

17:59:49 4 Q. So Idaho or Minnesota?

17:59:51 5 A. Yes.

17:59:52 6

17:59:56 7

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18:00:21 16 Q. Have there been occasions where you have lowered your  
18:00:31 17 price in response to customer feedback?

18:00:31 18 A. Yes.

18:00:31 19 (End of videotape. )

18:00:42 20 THE COURT: Okay. Any exhibits you want to put  
18:00:47 21 in?

18:00:47 22 MR. HANNA: The government didn't have any  
18:00:49 23 exhibits.

18:00:49 24 MS. DWYER: The defendants have two exhibits,  
18:00:52 25 Joint Trial Exhibit 049, which was Exhibit 1 in the video

18:00:55 1 and JTX 042, which was Exhibit 2.

18:01:01 2 THE COURT: Any objection?

18:01:01 3 MR. HANNA: No, Your Honor.

18:01:02 4 THE COURT: Those are admitted.

18:01:02 5 (JTX Exhibit Nos. 042 and 049 were admitted into  
18:01:02 6 evidence.)

18:01:03 7 THE COURT: Okay. So let's take our break for  
18:01:07 8 the evening. Let me ask on the streaming, who is watching  
18:01:12 9 the streaming? Do we have to cut that off is my question  
18:01:17 10 when we seal the courtroom?

18:01:19 11 MR. HANNA: I don't believe, Your Honor, we do.  
18:01:22 12 We have spoken with the counsel that dialed in and made him  
18:01:27 13 aware of corporate representatives are not -- they said they  
18:01:32 14 wouldn't do that.

18:01:33 15 THE COURT: Those that leave.

18:01:36 16 MR. HANNA: Those that leave will not be  
18:01:38 17 watching.

18:01:39 18 THE COURT: And you guys agreed with that?

18:01:41 19 MR. BUTERMAN: Yes, Your Honor.

18:01:42 20 THE COURT: So if we do that, then we don't have  
18:01:44 21 to cut it off when we seal the courtroom because it's not  
18:01:47 22 open to the public. Right?

18:01:48 23 MR. HANNA: Right.

18:01:49 24 THE COURT: Anything that we need to discuss  
18:01:52 25 before we leave for the day?

18:01:54 1 MR. HANNA: Not from the government, Your Honor.

18:01:56 2 MR. BUTERMAN: Nothing for the defendants, Your

18:01:57 3 Honor.

18:01:57 4 THE COURT: Thanks everyone. See you tomorrow

18:01:59 5 morning.

6 (Court adjourned at 6:01 p.m.)

7

8 I hereby certify the foregoing is a true and  
9 accurate transcript from my stenographic notes in the proceeding.

10

11 /s/ Dale C. Hawkins  
12 Official Court Reporter  
13 U.S. District Court  
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